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ABSTRACT

This paper examines issues involved in identifying and securing sales tax exemptions to curtail the potential negative impact of state sales taxes on assistive technology. Chapter I discusses the nature of sales taxes, including their definition, their impact, their structure and administration, and the sources of exemptions. Chapter II considers the provisions states have made for eliminating sales tax on the purchase of assistive devices in certain disability groups, including vision, hearing, mobility, and communication. Chapter III evaluates other options for eliminating sales tax, such as federal preclusion, having rehabilitation engineering centers pass on their tax exemptions to disabled consumers of equipment, strengthening the secondary market, exempting custom software, exempting tax on assistive technology services, and using out-of-state sales. Chapter IV presents a state-by-state analysis of the status of assistive technology exemptions, along with recommended courses of action. The paper concludes with general legislative and administrative recommendations. Tables appended to the paper list state sales tax law citations, sales tax administration agencies, recently enacted exemptions illustrating local economic or social concerns, vehicle exemptions by state, and other items. A total of 103 reference notes are appended. (JDD)

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State Sales Tax and Assistive Technology: Securing Exemptions for Sensory, Communication, and Mobility Aids

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CHAPTER I

THE NATURE OF SALES TAXES

A. Background

Sales taxes are an important source of revenue for state and local governments in this country. Paid by everyone who has occasion to make even incidental purchases, they are a ubiquitous feature of commerce and daily life. Sales taxes have important ramifications for economic activity and social policy. Yet, perhaps because citizens do not file returns or write large sales tax checks to the government, or perhaps because a sales slip is less compelling than a pay stub, these taxes have not attracted the attention that their scope and impact warrant.

As we know it, the modern sales tax is an artifact of the Great Depression. Facing the combination of rising social costs and declining revenues from traditional sources, states decided on sales taxes, often as "temporary" measures, to help alleviate their financial woes. Of the 45 states currently levying sales taxes,[1] 17 initially adopted them during the 1930's. Table 1 sets forth the citations for all current state sales tax laws.

Because sales taxes are imposed at the state level, great differences exist in their provisions and approach. These variations complicate any effort to generalize about their impact upon particular products or specific population subgroups. Nevertheless, an overview of the major structural options and administrative features should prove useful as background to our attempt to assess and modify their impact upon the dissemination of electronic aids to disabled citizens.

Subject to some blurring of definitional boundaries, sales taxes are generally considered to fall in the category of exaction known as excise taxes, distinguished from the other two major types, income taxes and ad valorem taxes. Excise taxes are those which impose a fee or charge for engaging in certain activities (such as the selling of goods or services) or on exercising certain privileges (such as that of engaging in the business of retail sales). Indeed, the exigencies of administering sales and other business taxes are largely responsible for requiring registration and authorization from the state in order to secure the right to engage legally in many business activities.

Structural variations in levying and collecting sales taxes exist. Chief among these are the following: (1) The tax may be applied to each transaction or it may be applied to the gross proceeds of sales. (2) It may be styled as a tax upon the vendor who is authorized to collect from the buyer. (3) It may be a tax on the consumer, in the collection of which the seller acts as agent for the state. In addition, the formulation of the tax may vary in accordance with a number of similar technicalities.

As the term "technicalities" suggests, many of these distinctions have little practical importance to this review; but they play a major role in determining the nomenclature that is used. For example, as discussed in Section D of this chapter, when the tax technically applies to each transaction, non-taxable transactions will be classified as "exemptions." On the other hand, when the tax is expressed in terms of the gross

proceeds of sales, the proceeds of sales which are not subject to tax will typically be characterized as "exclusions." For the sake of simplicity, this study will use the term exemption, except where it may be necessary to be more legally precise.

Of the 45 states that impose sales taxes, approximately 29 either allow, mandate, or directly impose local sales taxes as well. Typically, the exemption provisions for these local taxes correspond with those at the state level. Though one or two states permit local taxing authorities to add exemptions to those specified at the state level, only Louisiana appears to allow its local taxing authorities to narrow the scope of state tax exemptions in any material way.[2] There is, therefore, little danger that assistive technology could be exempt from a state levy but still subject to sales tax at the municipal, county, transit district, or other local level.

Every state that levies a sales tax also imposes a use tax, or "compensating use tax" as a use tax is technically known. As the name indicates, these taxes are intended to apply to property which has escaped the sales tax. This applies primarily to property that would have been subject to the sales tax if the purchase had not occurred outside of the state. These use taxes are imposed on the "storage, use, or consumption" of property within the state. One standard exemption from use taxes is property which is exempt from the state's sales tax, or which would have been exempt if the question had been raised.

In light of this parallelism, and in view of the lack of indications that use taxes represent either a major concern or a significant burden to the assistive technology community, this paper will not deal at length with this tax. Instead, it will focus on identifying and securing the sales tax exemptions that will render the use tax essentially irrelevant to assistive technology vendors and users.

With the goal of curtailing the potential negative impact of state sales taxes on assistive technology, it is appropriate to turn next to the question of what are their effects upon the dissemination and accessibility of assistive technology in our society. These tariffs may also have other implications beyond those of economics that deserve discussion.

B. Impact of Sales Taxes

In the most literal sense, state sales taxes have the effect of adding an average of 4.5% to the price paid for most goods by disabled and non-disabled Americans alike.[3] All else being equal, elimination of sales tax liability could conceivably increase the size of the individual market for assistive devices by this same 4.5%.

The assistive technology field is a small one by the standards of contemporary industry and from the standpoint of economy of scale. Although rapidly growing and increasingly populated by firms of stature and experience, it continues to be one in which research and development costs are high, marketing difficult and expensive, customer support often highly labor intensive, and the market both specialized and competitive. As a result of these and other factors, prices for assistive technology tend to be high. Active efforts on the part of the assistive technology and electronic aids

sector to reducing personal costs by relieving their customers of the burden of sales taxes could go a long way toward dramatizing the commitment of this industry to affordability and access.

Beyond the symbolic benefits of sales tax reduction efforts, economic concerns make these efforts more imperative than ever before. In the past, a substantial proportion of assistive technology sales has not been subject to sales tax obligations because there has been a predominance of tax-exempt governmental and institutional purchasers in this market. As individual purchasers become a progressively larger segment of the market, the proportion of sales that is subject to the tax can likewise be expected to rise. For many of these individual purchasers, though often willing to endure real hardship in order to get the equipment they need, the marginal price differential attributable to sales taxes may come to embody the difference between ability and inability to buy. This is all the more likely if certain legal trends continue. Among these are the recent enactment of tax rate increases in a number of states, as they attempt to grapple with serious budgetary and fiscal constraints. Equally ominous is the repeal in the past two years of several exemptions that were specifically targeted to the poor.[4]

Prior to the Tax Reform Act of 1986, state sales taxes were available as a deduction to those income taxpayers who chose to itemize on their federal returns. The deduction was available irrespective of the actual sales tax amounts they had paid. Those who did not keep records or who had not purchased "big-ticket" items that would generate a large sales tax deduction could claim a standardized amount, and compute on the basis of income and sales tax rate in the state of residence. Elimination of this sales tax deduction means that the partial subsidy for product costs which the deduction represented has disappeared for purchasers of assistive technology as for anyone else.

Sales taxes are a greater issue now in the assistive technology and technology transfer fields than at any time in the past. Paradoxically, this occurs at a time when public policy attention is focused on disability and the stimulation of high-technology industry to an unprecedented extent. In public policy toward assistive technology, including tax policy, there is a remarkable convergence of these two priorities.

These concerns must be addressed within the framework of existing laws. Attention then must be given to the structure and major features of these laws with a view to developing the kind of changes that will bring the desired reforms.

C. Structure and Administration of State Sales Taxes

State sales taxes are imposed upon personal property. The term "personal" serves to distinguish them from taxes on real property and is not to imply a distinction such as that between personal and business property. In the majority of jurisdictions, sales tax is also imposed upon the sale of services, so the tax is applicable to the sale of "goods and services." For purposes of delineating the scope of what personal property is to be taxed, all states adopt essentially the same approach, purporting to tax "all tangible personal property" except that which is specifically exempted by statute. In implementing this inclusive definition, tangible personal property is also defined broadly to cover any "corporeal" property, or anything which can be "seen, felt, or touched" or which is in any other way "perceptible to the senses."

The approach is materially different for taxing the sales of services. Whereas all sales of tangible personal property are subject to tax unless exempted, those states which tax the sale of services do so only to the extent those services are specifically included by the wording of the statute. The taxes on services are thus called "selective." In essence, if an item or type of property is not mentioned in the statute, one can presume that it is taxed; but if a service goes unremarked, one may reasonably conclude that it is exempt.

The definition of what constitutes a "sale" is an issue that must be considered separate from what goods or services fall within the ambit of the tax. Here again, states uniformly employ a standard that is comparably broad. Basically, any transfer of property for money, for any sort of "consideration," (change in the ownership or status of property that would reflect the reality of a sale) will suffice to bring the transfer within the scope of the tax. Even barter is included in the definition of sale in a number of states, meaning that each party to the transaction pays tax on the fair market value of the goods or services that they received. As discussed in the next section, each of these elements of sale, taxability, and property or service provides a rationale for structuring exemptions.

In some situations, the question whether a transaction involves the sale of goods or of services becomes important, because the answer can determine the taxability of the transaction. In such cases the answer usually depends upon the predominant purpose of the transaction (that is, on the intention of the parties). For example, incidental transfers of property, such as the conveyance of an interface cable at the cost of $25 or $30 within the context of a short training program on some equipment, typically will not be subject to sales tax liability as long as the training service is not.

The distinction between property and services also becomes relevant with certain items that would normally be assumed to be of the former type. For the users of assistive technology, custom computer software (discussed in Chapter III, Section D) represents the most important example. Most states have opted to define it as intangible personal property or as a service.

Just as states paint with broad brush strokes the kinds of property and the range of transactions on which sales tax will apply, so, too, do they take a comprehensive approach to describing the range of people and organizations who are subject to the tax. Sales taxes are business taxes, but they take as their point of departure the notion that "any person" who engages in sales of taxable property or services is deemed to be engaging in business. On the other hand, this stipulation provides the basis for excluding specified individuals or organizations from the definition of "person" for purposes of the applicability of the tax. Seldom is it desirable to be told by law that you are not a "person" but, from the standpoint of sales tax liability, this may be one of the rare instances in which such exclusion is to be prized.

Each state vests authority over enforcement and administration of its tax laws in a designated state agency. Table 2 lists the agencies with responsibility for the sales tax for each state. In almost all jurisdictions, this authority includes the promulgation of implementing regulations under the law, and the issuance of rulings, interpretations, or other administrative pronouncements aimed at definitively resolving the questions that

continually arise. Inasmuch as ambiguities in statutory language leave the scope of certain potentially important exemptions unclear in a number of states, the procedures for seeking such rulings will be discussed fully in Chapter IV.

To understand the assistive technology related exemptions that exist, it is necessary to examine the methods used by states to incorporate tax exemptions into their laws. Accordingly, exemptions are discussed in the following section.

D. The Sources of Exemptions

Two alternative ways are used to categorize exemptions. The first groups them according to the source of the exemption. The proceeds from a sale, an item being transferred, a transaction itself, or one or the other of the parties may be the source of an exemption. Under this formula, one would look to see whether the item was exempted from the definition of "taxable property," whether the transaction was deemed not to be a "sale," or whether one of the parties was held not to be a "person" for purposes of the tax. Each of these varying approaches are found among the range of exemptions that are applicable to adaptive aids.

Restated, an exemption of a sale or exclusion of its proceeds from sales tax may be obtained in any one or any combination of the following ways: a seller may be exempt from tax; the buyer may be exempt; the item being sold may be exempt; or some other dimension of the transaction (such as the purpose for which the property is to be used) may confer an exemption. Examination of some of the most frequently encountered exemptions will reveal the origin of the exemption.

All states exempt sales to the U.S. government from sales taxes because it is constitutionally impermissible for states to tax the federal government. This is the classic instance of the identity of the buyer serving as the ground for the exemption. With such notable exceptions as California, most states also exempt sales to themselves and their political subdivisions from the tax, although state constitutional provisions require this in only a few cases. These sold-to-government exemptions are of relatively little concern to the individual technology purchaser, but they do arise when an individual and some organ of government share the cost of equipment. These exemptions remain, as do exemptions on sales to nonprofit organizations in many places. This latter exemption is important to assistive technology vendors involved in institutional sales. (Nonprofit organizations, as tax exempt intermediaries in the technology transfer process, will be considered in Chapter III, Section B.)

The means used by states to implement the principle of governmental purchaser exemption vary widely. Some states exempt the U.S. government or themselves from the definition of purchaser. Others exclude the transaction from the definition of a sale. Still others stipulate simply that the proceeds of the sale are not to be included in "gross proceeds" for tax computation purposes. The net effect for each is about the same. The method becomes important in the guidance it offers on how remedial legislation in a particular state can best be formulated.

Instances of exempt sellers occur less often than those of exempt buyers; but they do exist, again most often in the governmental and nonprofit sectors. Their chief relevance to this review relates to programs such as rehabilitation engineering centers or other nonprofit groups that serve as conduits for equipment dissemination.

Exemptions arising from the "purpose of the sale" rule most commonly concern sales for resale. Such sales are exempted on the theory that the ultimate purchaser or consumer, who buys the item at retail, will and should pay the tax. Similar logic underlies the plethora of exemptions for items that, as part of the manufacturing or production process, are bought as components for goods that will eventually reach retail customers.

The second category of exemptions are called "per se" exemptions by states such as West Virginia, a term that aptly describes them.[5] Per se exemptions are those in which the exemption attaches to the item or property itself without regard to the identity of its buyer or seller or to the purpose for which it will be used. Most examples of per se exemptions relate to efforts of states to foster economic activity.[6]

Per se exemptions are the preferred approach to acquiring state sales tax exemptions both for the disabled consumer and the assistive technology vendor. For the most part, these exemptions are procedurally simpler than others. If a standard invoice will suffice to identify the property as exempt, typically there will not be a need for exemption certificates that establish the buyer's entitlement to the exemption. (Chapter II presents examples of this exemption format that already exist in the assistive technology field, such as Maryland's exemption of TeleBraille machines and New York's exemption of Optacons.)

Per se exemptions have other advantages as well. They offer the opportunity to educate legislators on how assistive technology can increase the functional capabilities and societal opportunities for disabled people. On the other hand, if implemented through a list of specific products rather than through a definition of the kinds of products envisioned, there is the risk that new products will be inadvertently denied exemption for some time after reaching the market. The roster of exempted items must be regularly updated.

As suggested earlier, sales taxes are plenary, with exemptions arising only insofar as prescribed in legislation. Administrators, however, have an important and ongoing role in interpreting and applying those exemptions. A classic example of this role will be presented later in a discussion of technology for hearing-impaired people (Chapter II, Section B). Many states exempt hearing aids, typically defined as items for the correction or improvement of human hearing that are "worn on the body." This elicits an important question concerning electronic listening systems that use FM and infrared transmitters and receivers that are "wearable." Do they fall within the definition of hearing aids? With the rapid pace of technological development, statutory language regarding exemptions will likely lag far behind the state-of-the-art.

Sales tax exemptions are a product of the legislative process. State legislatures are, therefore, constantly asked to respond to a broad spectrum of economic, social, and fiscal concerns. Hardly a legislative session is held in any state without some adjustment being made in its sales tax law. In this connection, it is important to observe

that the corpus of exemptions within any given state typically reflects a certain measure of randomness, embodying distinctions between what is and what is not taxable. This often belies any overarching plan or consistent strategy. No disrespect to legislators or to the legislative process is intended in suggesting that many of the exemptions represent well-intentioned responses to the needs and concerns of particular interest groups more than they do a systematic set of policies and norms for the operation of a tax system. (Table 3 lists exemptions enacted over the past five years that appear to reflect the concerns of local economic interests or social causes.)

With this background now in place, this review turns to a detailed evaluation of the extent to which states recognize electronic and other technology for persons with visual, hearing, mobility, communications, and other impairments in their sales tax laws.

CHAPTER II

EXEMPTIONS BY TYPE OF DISABILITY

Assistive devices accorded exemptions by various states are generally described in terms of the specific disability to which they relate. Recognition of specific disabilities, however, as they are distinguished from illness or medical treatment, is limited. The greatest part of this recognition partakes of what has been called the medical model. With the relatively few exceptions noted in the succeeding pages, exemption is predicated on a health care or medical treatment rationale. Various goods and services are spared from taxation on account of their use in the cure, mitigation, treatment, prevention, or alleviation of illness, disease, deformity, or the like. This can be glimpsed in the prominence of exemptions accorded prescription drugs in 42 states and prosthetic, orthopedic, orthotic, therapeutic, and medical devices, appliances, and equipment in a preponderant number of states. Nevertheless, some extraordinarily promising provisions can be found under these rubrics (as well as alongside them).

A. Vision

At least 27 states exempt traditional ophthalmic aids, including eyeglasses, contact lenses, and various accessories from sales tax. While the majority of these states limit this exemption to items that are prescribed for the correction of vision or the treatment of disease, most also define such items as prosthetic or medical in nature. This in itself presents a problem. Terms such as "prosthetic devices," while not defined uniformly from state to state, are generally understood at least to include a requirement that a device, to qualify as one, be "worn on the body" as a substitute or enhancer of a missing or defective part or function. This language often appears to reflect an orientation toward physical more than sensory impairments. In this context, decisions on exemptions, such as a recent Kentucky ruling denying exemption for corrective eyeglasses, may be less difficult to understand. In this ruling, the tribunal ruled that corrective eyeglasses did not qualify under the prosthetic devices exemption, since they were not needed by "crippled or disabled" persons.[7]

In view of the reliance on the prosthetic device model and the requirement for prescription by an appropriately licensed health care practitioner, the potential for building upon current vision care exemptions as a basis for inclusion of technical aids for partially sighted persons is small. Such a strategy would also have little value for blind persons, whose vision cannot be improved by technology. A number of states have incorporated salutary provisions into their laws, but this has been done entirely without reference or analogy to the language on corrective lenses. These states include Connecticut, Florida, Maryland, New York, and Texas. (Table 4 lists the statutory and regulatory citations for the pertinent provisions in these five states.)

Connecticut, for example, exempts from taxation sales of "any equipment designed exclusively for use by persons who are deaf or blind for purposes of communication by telephone." In Florida exempt status is accorded "parts, special attachments, special lettering, and other like items that are added or attached to tangible personal property so that handicapped persons can use them," provided they are purchased "pursuant to

an individual prescription." Maryland exempts "TeleBraille machines," in the context of deafness, but then extends exemption to "property manufactured or adapted specifically to compensate for blindness."

Exemption is also forthcoming in New York for "special attachments and lettering." These provisions, however, will include far more expansive and accessible terms--"special attachments and lettering" for use "by blind or other handicapped" persons, to the extent that they increase the cost of the underlying item. A lengthy list of exempt items issued by the state tax department, includes such things as "braille typewriters" and the "Optacon."

Finally, Texas exempts items such as "braille writers," "braille electronic equipment that connects to computer equipment," and "if purchased by the blind to enable them to function more independently," such equipment as "print enlargers, magnifiers . . . talking clocks, large print terminals, and talking terminals."

B. Hearing

A minimum of 34 states exempt hearing aids from sales tax. About 20 of these also utilize a prosthetics or medical appliance rationale, meaning not only that the equipment must be prescribed or dispensed by appropriate professionals (including in some cases licensed hearing aid fitters or dealers), but also, as noted earlier, that it must be worn on the body. Since certain electronic listening systems utilize components that can be worn on the body, possibilities for obtaining the inclusion of such devices under the definition of hearing aids have emerged. California and Massachusetts have thus far ruled that FM receivers or transmitters used by hearing-impaired persons for the improvement of hearing can qualify as exempt prosthetic devices, provided they are fully worn, or perhaps merely wearable, upon the body.[8]

It is encouraging to find opportunities for the incorporation of new technologies into established definitions. As in the case of blindness, sensory substitution technology for deaf persons may not be considered for exemption on the same basis as electronic amplification systems. Specifically, these are devices that bypass the use of the particular sensory function entirely by providing information in alternative media and formats.

Pennsylvania, for example, has determined that telecaptioning equipment does not qualify for exemption as a hearing aid.[9] In light of the fundamental differences between equipment which enhances a sensory function and equipment which circumvents it, such interpretations should not be at all surprising. Again, however,a number of states have provisions for such equipment, not by extension from hearing aids but along independent and unrelated lines. The states warranting attention in this regard are the same five covered in Section A.

Connecticut, as discussed earlier, exempts equipment "designed exclusively for use by persons who are deaf or blind for purposes of communication by telephone." (See Table 5.)

Florida, again somewhat obliquely, exempts built-in telecaptioning devices, to the extent they increase the cost of a television or other underlying device, provided their sale is made pursuant to prescription. It is not clear, however, what kind of health care practitioner would have authority or inclination to issue such a prescription.

Maryland exempts "telecommunications devices that are adapted specifically for hearing impaired individuals and devices that change digital codes into tones for transmission through telephone lines, flashing signal devices, or TeleBraille machines," and also exempts "decoders for captioned television programs for use by hearing impaired individuals."

In New York, "closed-caption receivers, equipment for use by hearing impaired persons in telecommunications, amplification devices, alarms, and flashing lights" are exempt from the application of the tax.

In Texas, exemption is granted for "specialized printing or signaling equipment used by the deaf for the purpose of communicating through the use of a telephone."

Although the exemptions discussed so far are defined in terms of the needs of one or another sensory disabled group, it is significant that nowhere among these provisions does the term "sensory" impairment appear. Neither does the concept of multiple handicaps, though, to be sure, such residual terms as "handicapped persons" can be interpreted inclusively or as catch-all concepts. As contrasted with sensory impairments, the class of disabilities falling within the ambit of "mobility" impairments is addressed as such in a number of states.

C. Mobility

A minimum of 28 states exempt wheelchairs from sales taxation. Only about a quarter of these require a prescription in order to claim the exemption, but numerous other requirements and conditions are imposed in those states which dispense with the strict medical model. Requirements as "use for medical purposes" and "use by a crippled or disabled individual" reverberate through the statutes.

In terms of categorization, there is great variation as well, with different states denominating wheelchairs as "prosthetic," "orthopedic," or "orthotic" devices, as well as "durable medical equipment." Perhaps the most obvious connection between wheelchairs and electronic aids would be some of the powered or motorized models. No state has been identified that excludes these from coverage under its definition of wheelchairs; but, by the same token, only four states specifically include them.[10] Considering mobility aids as illustrations of electronic adaptations, it seems likely that interpretive rulings should prove a viable means of obtaining their inclusion under the exemption in a number of jurisdictions.

Special driving controls and other vehicular access equipment represent another interesting dimension of the exemptions for mobility aids. Exemptions from sales tax for the purchase of vehicles themselves and/or access equipment are found in just over a dozen states. (Table 6 summarizes these provisions.) These, however, also include a number of severe and novel restrictions. In several states, these restrictions limit the exemption to disabled veterans, or even only to disabled veterans whose disabilities are

"service-connected" and who receive financial assistance toward the purchase of the vehicle from the Veterans Administration (now the Department of Veterans Affairs) or from state social services agencies.

Similar to eyeglasses and hearing aids, the exemption of wheelchairs and vehicle access technology, while laudable, generates little momentum for the broadening of this protection to other electronic mobility aids. As illustrated with the disabilities previously covered, there are, however, one or two additional exemptions scattered through the statutes which may offer some opportunity for expansion in this area. By far the most intriguing of these is one that might be called a quality of life exemption, so far as facilitating mobility is concerned.

These are the "normal life" or "reasonable life" provisions that exist in Florida, Kansas, and Michigan.[11] In Florida, exemption is afforded to devices which enable a handicapped person to lead a "normal life . . . by facilitating mobility." Kansas likewise exempts equipment which will contribute to a "reasonable" life by facilitating mobility. In Michigan, the pertinent language refers to equipment to assist the disabled person in leading "a reasonably normal life."

Although the very open-endedness of such terms have an aura of excitement, there are a number of limitations to temper enthusiasm. Both Florida and Kansas appear to define such equipment in terms of prosthetics. Kansas, while not saying what the concept means, does indicate that it does not include equipment for automobile operation or access. Michigan specifically requires that the devices in question be prescribed, though its definition of who qualifies as an appropriate health care practitioner includes a broader range of licensed professions and disciplines than perhaps any other state in the country.

Notwithstanding its prescription requirement, Michigan's provision is particularly interesting, in that it does not address itself only to mobility, but admits more reasonably normal living with respect to other functional capacities as well. In the face of such a provision, and pending an effort to obtain an administrative ruling or position statement from the Michigan Department of the Treasury, one may venture to wonder whether there is any possibility that such a provision could include environmental components which enhance the leading of a reasonable life in myriad ways. The probability is, of course, that it will not, since such systems, like braille or speech output for computers, compensate for the loss of physical functions in ways that the medical model does not contemplate.

D. Communication

Many of the exemptions already discussed involve communications technology, but there are a few exemptions that appear explicitly oriented toward communications disabilities. Along these lines, Maryland apparently exempts artificial larynxes from the tax.[12] Similar exemptions, however, can also be inferred from the terminology regarding replacement body parts used in statutes in many other states.

A Virginia provision, however, has far greater interest. This provision authorizes exemption for "special typewriters and computers . . . used by handicapped persons to communicate . . . when prescribed"[13] and also granting exemption, under the

category of durable medical equipment, for "writing and speech aids for the impaired." The provision on "special typewriters and computers" appears to apply to anyone who is "handicapped" within the meaning of that term in the state. This should include the braille and speech output computer equipment that blind people use. Likewise, it would appear that the "writing and speech aids" language should cover, among other things, augmentative communication devices that are so useful to persons with vocal communication disabilities. (Chapter IV will discuss the best methods of finding out for sure.)

CHAPTER III

OTHER BASES OF EXEMPTION

Chapter II considered the provisions states have made for eliminating sales tax on the purchase of assistive devices by individual users. There are, however, other approaches to the achievement of this goal which also hold out great promise apart from exempting the sales of particular devices or of devices that perform specified functions. This chapter will evaluate the most significant of these options in order that their current use and prospective impact may be fully understood.

A. Preclusion

What if a simple federal law could bar states from imposing sales taxes on assistive technology? It may be, at least to some degree, that one could.

Chapter I noted that the U.S. Constitution effectively proscribes state taxation of the federal government. Similarly, the famous Commerce Clause of the Constitution largely prevents states from taxing transactions in "interstate commerce." While the meaning of these limitations on the taxing power of states is a perennial subject of litigation, it's clear that the federal government also has the discretion to prevent states from taxing, not only purchases made directly by it, but also certain purchases made with federal funds by others. This power has been exercised in a number of areas, most notably in the provisions of the Food Security Act of 1985 depriving states of food stamp assistance for their citizens if those states impose sales taxes upon food purchases made with the stamps.[14]

To be sure, the federal law does not directly ban imposition of the taxes, but by penalizing states financially for doing so it accomplishes, albeit somewhat deviously, precisely that objective. Unwilling to risk the loss of federal funds, states have hurried to enact food stamp exemption provisions. Curtailment of federal funds to states which fail to bring their laws into compliance with national policies, as most vividly demonstrated in recent years in connection with federal highway funds, is controversial. For better or worse, it is much more deeply ingrained in the fabric of our federalism than many people are aware.

Leaving aside the politics of the matter, it would not be technically difficult or constitutionally problematic to craft legislation conditioning the receipt of funds under the Technology-Related Assistance for Individuals with Disabilities Act[15] upon the willingness of states to spare the technology from their sales taxes. Options for such legislation could range from insisting on exemption from the tax only for those purchases directly supported with federal funds, to simply requiring exemption of all such equipment as a condition of full financial participation by a state in the program.

B. Rehabilitation Engineering Centers

Along with a host of other governmental and nonprofit organizations, rehabilitation engineering centers have played an increasingly pivotal role in the development and dissemination of assistive technology devices and services in recent years.

The governmental, charitable, medical, or other nonprofit status accorded rehabilitation engineering centers in many states confers not only income tax exemption but also sales tax immunity upon them. They may, therefore, often be in a position to pass on the benefits of these tax exemptions to disabled consumers of equipment. Beyond their vital contributions to product development, user training, and public education, many of these organizations, serving as conduits for the dissemination of devices in the disabled community, contribute as well to technology transfer in its most literal sense. No one would suggest that helping consumers to escape the burden of taxes on equipment would justify the undertaking of such efforts; but where that admittedly subordinate goal can readily be achieved, there is eminent justification for seeking to avail consumers of the cost savings it offers.

Depending upon their status as governmental or nonprofit, depending upon the activities they are organized or chartered to perform, and depending upon a number of other factors, a rehabilitation engineering center may be eligible for sales tax exemption on its purchases of adaptive equipment, on its sales of such equipment, or on both. Undoubtedly, most rehabilitation engineering programs are fully aware of the tax laws surrounding their work, but a brief overview of this subject may prove of value to those not directly involved in the provision of services. Since it is the agency sales end of the equation that presents the greatest difficulties, it is on this dimension of organization participation in the technology dissemination process that this discussion shall focus.

States approach tax exemption for nonprofit entities in two ways. Some states structure their laws principally along the lines of specifying those organizations which are entitled to tax exemption. The majority of the states, however, set forth eligibility criteria which organizations must meet. In almost every state, whichever method or combination of methods predominates, qualification for exemption includes use of exemption certificates or comparable documentation of entitlement to exemption.

As suggested above, most states permit various nonprofit organizations to make purchases of goods and services free of sales or income tax. Tax exempt status under Sec. 501(c) of the Internal Revenue Code, however, is not an automatic predicate for this privilege in all cases. Where an organization has been granted the right to make purchases free of sales tax, this right will ordinarily not be plenary. It will extend to those purchases made in or for the conduct of its ordinary nonprofit activities, whether charitable, religious, educational, or otherwise. Absent situations in which it is serving as a front for tax-free purchases for private individuals, the purchases made by nonprofit groups rarely pose a danger of being motivated by the desire for profit. When considering sales made by them, however, the danger that they are engaging in business is a very real one. This is the major reason why sales by private, nonprofit groups are more severely restricted than are their purchases.

Rehabilitation engineering centers, nonprofit service organizations, consumer groups, and other organizations have participated in the technology dissemination process with great creativity and variety. For purposes of this discussion, primary interest is focused on programs in which they serve as conduits, providing subsidies, loans, loan guarantees, or other forms of direct and indirect assistance to the individual purchaser. Such programs have already yielded beneficial results, and for many reasons are likely to burgeon in the coming years. Programs desiring to offer financial assistance to clients, including avoidance of state sales taxes, passage of title to the

equipment through the nonprofit organization will almost always be necessary, even if title is vested in the organization for only an instant. This cannot, however, lead to sales tax exemption unless both the purchase (if the equipment is purchased) and the sale (if it is sold) are exempt from coverage under the tax. "Noncompetition" is perhaps the single most important principle to be considered when devising means for avoiding tax on sales to disabled consumers.

About twelve states allow charitable or other nonprofit agencies to engage in sales as part of their regular activities or in the course of their customary work. The principle of noncompetition as one of the criteria for exemption in connection with these sales is apparent in a number of these states, but specifically emphasized in three of them.[16] If conduit programs can be established in ways that minimize competition with established commercial enterprises such as with mainstream computer and electronics firms, their chances of obtaining full sales tax exemption should be materially enhanced. If competition is defined under these laws as the selling, without tax, of the same products or types of products as commercial enterprises are marketing, then adaptive technology manufacturers and distributors may be well situated to achieve the requisite noncompetitive status. Their products are designed for use by disabled persons and are for the most part still not distributed through mainstream commercial channels. Were the producers and distributors of various categories of assistive technology able to enter into productive partnerships for enhanced equipment dissemination with rehabilitation engineering centers or similar nonprofit groups, it is safe to say that such programs could be of great financial benefit to the intermediary groups, without running afoul of any tax laws. In the present context of the assistive technology field, such arrangements would not pose any rise of antitrust or restraint of trade allegations, provided, of course, that certain obvious protections were built into the operational plans.

Pursuant to the provisions of the Technology-Related Assistance for Individuals with Disabilities Act of 1988, a new kind of rehabilitation engineering center may soon be coming upon the scene. This is the multi-state center, one which is likely to proliferate owing to its potential for making the most effective use of scarce rehabilitation engineering resources and expertise. In any thinking and planning for the role of governmental units or tax exempt private organizations in the technology distribution system, the status and potential of this new form of institution must be taken very fully into account. Currently, Vermont expressly includes "multistate" entities among tax exempt units of government.[17] Maryland grants sales tax exemptions to organizations from adjacent states, if they regularly carry on their charitable activities in Maryland.[18] Numerous precedents for multistate agencies already exist in the form of port authorities, water resources management commissions, and other special districts.

Besides multistate centers, there is another new institutional form beginning to make its appearance. This is the nonprofit technology company, which, for a variety of reasons, will typically have the capacity to deliver products to consumers at a lower cost than would otherwise be possible. Tax considerations are a major impetus for the formation of such companies. Sales taxes ought not be omitted from their calculations.

C. The Secondary Market

At today's ever-accelerating rate of technological change, it often seems that new products are superseding old at a dizzying pace. Rapid innovation is a source of frustration to many, including some who invest in research and development or product marketing, and some who scrimp, save, and go without other things to afford the technology they need, only to find that it has been eclipsed by progress. However, this rapid pace of technology development has also proved a boon to the secondary and used equipment markets. As equipment users seek the functional capabilities that new devices afford, the still serviceable devices that they have previously been using often become available for transfer to new users.

On average, the assistive technology community has not focused on strategies for rationalizing and strengthening this market. Yet the potential of the secondary market for increasing the total amount of useful technology available to disabled persons is substantial. Discussion of strategies to enhance the effective operation of this market are, of course, beyond the scope of this study. It is important, however, to remember that "casual" or "occasional" sales made by one private individual to another are generally exempt from sales tax.

With the exception of certain types of property, most commonly automobiles, approximately 15 states[19] expressly exclude such casual or isolated sales of property from taxation. This is accomplished in a number of different ways. One way is to exempt private persons who are not engaged in business from the definition of "person" under the law, by specifying that someone making fewer than three, or some other specified number of sales per year, is not engaged in business. It is important for technology transfer to note that none of the states which provide for this exemption appear to predicate its availability on the dollar cost or value of the property in question.

D. Custom Software

Software-based approaches are taking an increasingly prominent place alongside the products of hardware engineering in the development of assistive technology. As this trend continues, the role played by custom software, including the need for individualized modification of pre-written programs, is also destined to grow. With keyboard macros, hardware-specific setup sequences, and numerous kinds of specialized routines, flexibility and individualization are increasingly more attainable through customization.

For this reason, it is important to note that approximately 20 states do not claim sales taxes on the cost of custom software. (These states are listed in Table 7.) The definition of what constitutes custom software, like the rationale for the exemption, naturally varies; but some points are fairly universal. This includes the writing of software (applications or operating system) to meet the purchaser's individual needs, and the modification of "canned" software so as to make it usable by the particular customer. The vendor's bill or invoice must separately state and itemize that portion of the overall charge which is attributable to the customization component when a part of the cost for the assistive technology represents a charge for these customization activities.

As indicated above, rationale for the exemption has varied. In some states, custom software has been declared to be "intangible" personal property, intellectual property in essence, and as such not subject to tax. In other states, particularly those in which only property but not services are taxable, custom software has been held to constitute a service, since its market value derives from the individualized creative effort that went into its creation. In still other states, it has simply been held to be an exempt service. This use of divergent methods to achieve the same goal, however, has more than academic interest. It illustrates that the way exemptions will be structured depends upon the pattern and organization of the underlying state statute.

The custom software exemption should serve to crystallize another important point, as well. If there are fads or fashions in sales tax exemptions, as there are in film stars or clothes, then, second only to "enterprise zones," custom software is "hot." The serious point here is that, while as recently as a decade ago, custom software was probably unknown to most legislators, today it is exempt in nearly half the sales tax states. While the reasons are different, there are many grounds for believing that we are poised for a comparable phenomenon in the area of technology for disabled people. More and more people widely and fully appreciate the potential of assistive technology for contributing to education, employment, and personal self-sufficiency for disabled people.

E. Services

This study has not dealt extensively with the treatment of assistive technology services under state sales tax laws on the theory that their taxation does not represent a major problem. A few words may prove useful, however, on how problems can be avoided in those states which do purport to tax selective services. Many of the services that equipment purchasers and users would avail themselves of are in any event exempt from tax.

First, where an item of property is exempt from sales tax, services associated with it are virtually always exempt as well. Second, costs for such things as the delivery or installation of computers or other equipment, or for the provision of training to users, are frequently exempt in their own right. The cost of warranties, service contracts, or other forms of insurance, however, are governed by varying provisions depending, for example, on whether the charge is mandatory or optional. Certain federal excise taxes may also be excluded, if separately shown.

In relation to the capital costs of the equipment itself, the impact of such charges on sales tax liability is, of course, marginal. Since in theory every penny matters, it is important to remember that deductibility of these incidental costs generally depends upon the use of an itemized invoicing format, which separately states the charges, so that state taxing officials can verify what portion of the entire charge was deductible. Thus, where a vendor can determine with reasonable accuracy how much of the overall charge is attributable to each of these incidental services, it is, in the service tax states, a better practice to itemize these costs as much as possible. It is believed that the overwhelming majority of technology vendors already follow this practice routinely.

F. Out-of-State Sales

As mentioned earlier, states are not permitted to tax interstate commerce. As this relates to sales taxes, it means that states have been largely unable to tax the rapidly growing portion of retail sales conducted by mail-order, except where buyer and seller are located in the same state. States have become increasingly dissatisfied with this situation. A number have petitioned Congress to enact legislation that would allow them to tax mail-order sales. Such legislation is under discussion and would almost certainly be constitutionally feasible.[20] In the interim, states have employed a range of other strategies to try to collect this revenue.

Among these measures, one of particular interest is the reciprocal tax agreements that have sprung up among states. Exemplified by the Great Lakes Interstate Tax Compact, these agreements involve either attempts by states to collect taxes on sales made from within their borders to residents of the other signatory states, or efforts by member states to encourage their vendors to collect use tax in connection with property that is being shipped to the other member states. Such arrangements also contemplate the exchange of information among the participating states, principally so they may identify firms which, though based elsewhere, are actually sufficiently connected with the other states to be classified as "doing business" in them.

Although nothing approaching a survey has been taken, it does not appear that a significant proportion of mail-order adaptive technology vendors are legally required to collect use taxes on sales to other states. Though vendors are encouraged in and by a number of states to voluntarily collect these sums, anecdotal evidence suggests that not many do so. The problem is that if an out-of-state, mail-order vendor voluntarily undertakes to collect the use tax, that vendor may have no way of knowing whether the transaction would have been exempt, had it taken place in the buyer's state. To avoid inadvertent collection of taxes that are not owed, it may therefore be advisable for purchasers to let sellers who collect use tax know that the sale is exempt. Vendors cannot reasonably be expected to know this, for if their mail-order business is nationwide, it would be impractical for them to keep up with changes in each state's tax laws.

CHAPTER IV

STATE BY STATE ANALYSIS

As the data presented in the foregoing chapters make clear, the 45 jurisdictions that impose sales taxes differ enormously in their approach to the questions of exactly what is to be taxed and how. As a result, generalizations regarding the precise course of action to be recommended are dangerous. Fundamentally, states can be divided into three basic groups for analytical purposes. These are:

a) States in which substantial assistive technology exemptions already exist,

b) States in which ambiguities in statutory language require interpretations or rulings from state tax administration authorities in order to determine whether meaningful exemptions exist; and

c) States in which statutory change through legislative action represents the only source of potential sales tax relief for adaptive equipment.

Table 8 lists the states by group, with dual designations for those that need to be allocated to more than one group.

Alabama (C): Alabama exempts few items other than prescription drugs. In connection with charitable exemptions, it follows the approach of including a number of specifically named organizations. Two of these are relevant to the disability field.[21] To the degree that the state allows listed organizations to make non-taxed sales, provided not for pecuniary gain, it might be possible for nonprofit groups interested in mounting equipment loan programs to obtain legislative sanction.

Alaska: n.a.

Arizona (B): Because of the interesting way it defines "prosthetic" devices, a very intriguing possibility exists in this state. A prosthetic appliance is defined as, "an artificial device necessary to support or take the place of a part of the body or to increase the acuity of a sense organ."[22] Although there is some internal contradiction on this point,[23] it appears that, at least with respect to hearing aids, this definition is not limited to items worn on the body. If this is so, and since the law contemplates exemption for appliances that increase sensory acuity, a tax ruling, as provided for under the statute, should be sought from the Department of Revenue regarding the range of devices to which this sensory acuity exemption might apply.

Arizona is also a state which presents an interesting question of strategy. Because taxpayers are given ample opportunity to contest deficiency assessments, it would not be terribly risky to proceed on the assumption that various sensory aids are exempt, litigating the matter when and if the administrative agency decides to the contrary. This is not recommended, however, for a number of reasons, ranging from penalties and litigation costs to possible exposure of purchasers to retroactive demands for payment. Adoption of a prospective strategy through utilization of the rulings is preferable here, as in all other states where the issue may come up.

Arkansas (C): No substantial exemptions exist or can be postulated to exist here. In fact, even prosthetic devices appear to fall outside the pharmaceuticals exemption that is provided. Very specifically defined types of charitable organizations, mainly hospitals, are given authority to sell certain property without tax; but that grant of authority appears sufficiently narrow to require legislation if it is to facilitate any sort of dissemination program.

California (C): An important piece of legislation was introduced in the California legislature in 1989.[24] This bill would exempt from tax the proceeds of sales of "electronic devices . . . or software specifically designed and manufactured to enhance the communication or mobility of visually impaired persons." The bill adopts a value added approach to the exemption, whereby only that portion of the cost attributable to "rendering the final product specifically usable" by the visually impaired would qualify for the deduction. Moreover, for a device to qualify for exemption, it would need to have a value added component equal to at least 75% of the retail value of "the basic component parts." Finally, the exemption would only apply to products having a basic retail cost (a pre-modification cost) of at least $1,000. Provisions such as these clearly reflect an effort to fashion a bill that will be acceptable to the state, and probably represent the outgrowth of negotiations between sponsors and state officials. In the compromises that this worthy legislative effort adopts, glimpses can be seen of many of the issues that reform efforts in other states will encounter. (These objections will be discussed further in Chapter V, Section A.)

Another hopeful sign regarding legislative possibilities in California is the frequency with which it enacts exemptions. No less than six exemptions were created or expanded during 1988. Beyond proposals such as that described above, one would think that opportunities also exist for exemption of TDD equipment. California operates a program for the purchase of TDD equipment for eligible deaf individuals. This program is financed by a small monthly surcharge on phone bills, with equipment purchases made through a state agency. Since California does not generally exempt its own state agencies from sales tax on their purchases, such tax is probably being paid on TDD purchases made under the program. It may be deemed in the public interest to remove sales taxation, at least on these TDD purchases.

Colorado (C): This may be a state where the addition of a few words to the statute could yield great benefit. The law exempts "therapeutic devices, appliances, or related accessories . . . sold to correct or treat a human physical disability or surgically created abnormality," when sold on the recommendation of a physician.[25] Why not insert the words "or sensory impairment" after "physical disability," and with regard to the whole, why not add "rehabilitation" along with "treatment"? Wording such as this is not contemplated under the current statute, so cannot be characterized as mere clarification of an imperfectly executed legislative intent, but it is probably worth a try.

Connecticut (A,B,C): As Chapter II indicated, this state provides an interesting exemption for "any equipment designed exclusively for use by persons who are deaf or blind for purposes of communication by telephone."[26] Depending on how one interprets this language, the words "designed exclusively" could present a problem. If interpreted literally, they could fail to include devices, such as braille or synthetic speech terminal devices, which do facilitate such communication when connected to telephones by modem, but which are obviously not designed "exclusively" for this

purpose. One would hope at least that devices with built-in modems would qualify without difficulty. As such, their entire cost should be exempt from the tax, not merely that portion of the cost which is attributable to the built-in modem. There do not appear to be any value-added exceptions in Connecticut's law.

As clarification is concerned, this may be one of those rare cases in which no news is good news. It seems plausible that vendors of products which meet the narrower definition could begin selling their products without collecting sales tax. Since inclusion of the broader range of items is also desirable, and since the state provides a three-year statute of limitations on refund claims[27] efforts to obtain an interpretation might be useful. Inasmuch as neither the regulations nor the sales tax bulletins issued by the Department of Revenue Service deal with this issue, that agency should be contacted with respect to the procedure for securing a definitive interpretation. Legislative changes can then be sought, if thought necessary.

Because Connecticut defines hearing aids under the "worn on the body" standard, this state may also be a candidate for inclusion of electronic listening systems. If administrative means cannot facilitate their inclusion in the definition of exempt hearing aids, this issue, too, can be addressed in the legislative initiative that will in any case be necessary.

Irrespective of the way the DRS may define the scope of these exemptions, this is a state where legislative reforms are appropriate and feasible. Generally speaking, Connecticut is a state which defines its exemptions very specifically, and which has enacted a number of them, including the addition of no less than 10 new ones of varying scope between 1985 and 1988. On the other hand, faced with fiscal difficulties that led it to raise its sales tax rate in 1989 to among the highest 8% in the nation, Connecticut has also commenced repealing exemptions over the past two years. Still, as an affluent state which has demonstrated an awareness of sensory aids technology, this should be a state in which progress can be made. In particular it would be desirable to extend the telecommunications equipment extension to any equipment designed to assist deaf or blind persons in reading, writing, or telecommunications. The approach taken by this state does not suggest broad, purpose-based language such as "intended to compensate for a physical disability or sensory impairment," but use of specific categories may achieve a nearly comparable result, while not requiring legislators to adopt an unfamiliar structural approach to the delineation and granting of exemptions.

Delaware: n.a.

Florida (B,C): As noted in Chapter II, a number of interesting exemptions are authorized in this state, but all would seem to require more elaboration than is currently forthcoming in the implementing regulations.[28] Taxpayers (which technically means consumers in this state) can write to the Department of Revenue at its Bureau of Tax Information and Assistance, Taxpayer Assistance Section, P.O. Box 5139, Tallahassee, FL 32314-5139. The name, description, and recommended use of the item in question should be indicated. More broadly, the law provides for the issuance of technical assistance advisements by the department, and a comprehensive set of inquiries seeking to elicit clarifications preferably might be obtained through the use of this procedure.

An interesting feature of Florida law is that, with regard to a number of exemption categories including "common household remedies" and "prosthetic and orthotic devices," the Department of Revenue accords exempt status to items that are contained on a list of such products supplied to it by a coordinate state agency, the Department of Health and Rehabilitative Services. In addition to meeting the statutory definition, such things as wheelchairs and hearing aids are granted exemption by reason of inclusion on DHRS's list. That being so, it might be useful to examine the criteria that agency uses in compiling the list, with a view to obtaining the inclusion of additional specific items under the exemption through its expansion. In this connection, however, it should be noted that the state's Division of Blind Services is housed within the Department of Education. Some relative unfamiliarity with sensory aids for vision loss on DHRS's part may therefore be foreseeable.

Florida's definition of prosthetic and orthotic devices is interesting. It describes them as "any apparatus, instrument, device, or equipment used to replace or substitute for any missing part of the body, used to alleviate the malfunction of any part of the body, or used to assist any disabled person in leading a normal life by facilitating such person's mobility. . . ." In theory, sensory aids alleviate the malfunction of a part of the body. The problem is, as noted in Chapter II, Section B, that such provisions as these do not contemplate alleviation by substitution, as it were, but instead contemplate something which restores the function in a literal sense, such as an artificial limb or other prosthesis. In such circumstances, the prospects of achieving any broadening of the definition through interpretation are virtually nonexistent. In a state such as this, however, where issues surrounding mobility impairments have received considerable attention, there may be some benefit for making the definition of "malfunction of any part of the body" an object of statutory reform.

Although it would be foolish not to be pleased with the exemptions that do exist in this state, they are procedurally encumbered to a degree which may make them quite difficult, and potentially costly to utilize. The exemption for "parts, special attachments, special lettering, and other like items" probably includes such things as large-print controls for kitchen appliances, and other similar add-ons of the kind that would no doubt be useful to a significant portion of Florida's large elderly population. The prescription requirement, however, even for fairly small deductions, may be impractical to use. It is unclear how a physician could or would write a prescription for, or otherwise document, the recommendation of such items; but it is also uncertain that anyone would pay the cost of a physician visit to obtain such a prescription. Even a phone call might seem just too much trouble.

Accordingly, so far as items that have no reasonable connection to medical expertise are concerned, legislative reform efforts should also focus on eliminating this burden on the consumer and the practitioner alike. It would likewise be useful to reduce exemption certificate requirements that apply to most exempt devices.

Georgia (C): Exemption is allowed for "medical equipment," but this concept is too narrow to be of any use here. With little by way of definition, the state also exempts hearing aids. It might be possible to seek an administrative interpretation regarding the inclusion within the definition of hearing aids of assistive listening devices, but the very strict construction of exemptions applied by the Department of Revenue gives little reason for believing that such an application would meet with success.[29]

Hawaii (C): For the most part, this state implements its exemption strategy through identification of buyers and sellers who are exempt. One interesting point is the complete exemption for all sales made to persons living in Kalawao County who have Hansen's Disease, as well as sales to kokuas (their helpers).[30]

The Hawaii tax is interesting for another reason. Among states purporting to structure their taxes in terms of the gross proceeds of sale, this is perhaps the most extreme. It taxes proceeds from all business activities including all retail sales activities. For this reason, it needs to incorporate a number of unusual exemptions, such as wages, since wages are among the proceeds of engaging in business. This is a vivid illustration of the fact that the nature of the tax determines the character of the exemptions, for under an ordinary formulation wages would never have become an issue.

Another remotely relevant provision here is the exemption of gross business proceeds of blind, deaf, or totally disabled persons up to the first $2,000 of such income per year.[31] One wonders how the state legislature would react to a proposal to remove the dollar limit to the extent that proceeds over that amount, say to $50,000 or without upper limit at all, were attributable to the sale of suitably defined assistive technology to other blind, deaf, or otherwise disabled persons.

Prosthetic appliances, defined to exclude auditory, ophthalmic, or ocular devices, do qualify for exemption, but, consistent with the state's overall pattern, only when prescribed and sold by a licensed health care practitioner or licensed dealer.[32]

Idaho (C): This state has recently undertaken a study of its tax structure to determine among other things the justification for existing exemptions.[33] In light of this, it would not seem likely that significant progress could be made here in the near future. For Native American residents of the state, it should be noted that sales on reservations by tribes are largely exempt, without any apparent requirement that the purchaser be a resident on the reservation.[34]

Illinois (C): This state exempts "medical appliances," defined in terms of correcting a functioning part of the body or substituting for a missing part. Hearing aids are also exempted. Requests for interpretation should be made to the Department of Revenue, but legislation is likely to be needed. The state has recently enacted a major revision of its sales tax laws, providing, among other things, for extension of state tax to more items and the removal of local authority to tax a number of things, including medicines and medical appliances.[35]

Indiana (C): Among exempt sales in this state are those by qualified not-for-profit organizations "to improve the skill or professional qualifications of members of the organization in carrying on the work or practice of their trade, business, or profession, and not used in carrying on a private or proprietary business."[36] While this appears directed at things like continuing education programs, one wonders if it could have any applicability to self-help groups composed, for example, of disabled technology users entering or returning to the work force. A very limited range of medical equipment is also exempted, as are hearing aids subject to the "worn on the body" test. A revenue ruling might be sought from the Department of Revenue on other listening devices, and

an appropriate membership organization might wish similarly to inquire whether it could serve as an intermediary for the sale of assistive devices to its members. Realistically, it seems probable that legislation will be needed in this state.

Iowa (C): Although prosthetic, orthotic, and orthopedic devices are exempt, medical devices, which are regarded as a broader category, are not.[37] Interestingly, though the range of exempt equipment is narrow, if a taxpayer can show clear evidence that non-exempt items were used as prosthetic or orthopedic devices, exemption will be granted. Prosthetics are defined in the usual terms of replacing a missing part of the body, so the likelihood of getting most kinds of electronic equipment to qualify would seem small. On the other hand, however, eyeglasses, hearing aids, and contact lenses are set forth as examples, meaning that sensory function may perhaps be denominated a "missing part." This may warrant the seeking of a declaratory ruling from the Department of Revenue and Finance on such things as wearable listening devices, but the prospects of success do not seem great. Still, the chances may be better than in some other states, because the administrative agency has shown itself willing to interpret some provisions according to their spirit. In deciding whether a new type of diabetic testing equipment was exempt under the rule establishing that certain test kits were, it ruled that in specifying certain kinds of testing equipment, the legislature had not intended to exclude new versions that might be subsequently developed.[38]

Very few states mention rehabilitation among tax exempt charitable, educational, or other nonprofit purposes. Iowa, though, includes among organizations to which sales are tax exempt, "rehabilitation facilities providing accredited rehabilitation services to persons with disabilities. . . ."[39] This does not mean that such organizations are not exempt in other states. They are routinely absorbed under the "charitable" or "educational" categories.

Kansas (C): This state's statute concerning prosthetic devices that are tax exempt when prescribed is provocative. It also includes equipment "used to assist any disabled person in leading a normal life by facilitating such person's mobility." A proviso, however, is added stating that such equipment shall not include motor vehicles or accessories to be attached to motor vehicles.[40] One wonders what sort of mobility aids are intended. A taxpayer wishing clarification may request a private letter ruling from the Department of Revenue. Revenue rulings are also issued on topics deemed to be of general interest. There is nothing else in the state's law which suggests that any significant technology exemptions could be secured through this process. A legislative effort will be required.

Kentucky (C): This is an interesting state for its definition of "prosthetic devices and physical aids." For in addition to various prescribed items, it includes "artificial devices individually designed, constructed, or altered solely for the use of a particular crippled person so as to become a brace, support, supplement, correction, or substitute for the bodily structure including the extremities of the individual."[41] The notion of individualization runs through the state's decisions, embodied in revenue policies and revenue circulars, on exemption issues. Even with hearing aids, prescription by a licensed physician or individual design are the alternative sources of exemption. What would need to be done to an off-the-shelf assistive device to bring it under the "individually designed" prong of the definition is not evident. It is also unclear whether, if add-ons of any kind were to suffice, the exemption would be on the total cost of the

item or would be reckoned on a value-added basis. Legislative proposals will need to be developed in this state. Considering that the individualization concept appears to be entrenched in the state's law, the notion of technology to meet the functional needs attributable to individual disabilities might be a starting point for drafting new legislation.

Louisiana (C): Prescribed prosthetic and orthotic devices, as well as patient aids, are exempt from the state tax. All, however, are defined in ways that give little hope for electronic technologies. Repairs, however, for exempt prosthetic devices are taxable.[42] Louisiana has an inordinately complex set of provisions. It is also one of the few states to have suspended exemptions for specified periods of time, as opposed to simply repealing them. Remedial legislation, beginning with such basic items as hearing aids, will be required. In view of the severe fiscal problems effecting the state, prospects for passage of any new exemption legislation would, however, seem small.

Maine (C): Although this state's laws contain no exemptions of direct pertinence to assistive technology, prospects for enacting some would appear to be better than average. This optimism is based on the state's progressive exemptions in many other areas, and its innovative use of the state bonding authority to finance assistive technology loans.

One possibility for favorable administrative interpretation of an existing exemption should be explored. Like most states, Maine exempts some diabetic supplies from its sales tax. These exemptions have not previously been discussed because they have little to do with technology, involving as they do insulin, syringes and hypodermics, blood sugar testing kits, and the like. Maine's provision differentiates it from other states by extending exemption to "all equipment and supplies, whether medical or otherwise, used in the diagnosis or treatment of diabetes."[43] With an exemption of this scope, one wonders whether technology used by those with diabetic retinopathy, such as speech-output computer equipment to compensate for loss of vision, might not be includable in the exemption. Taxpayers may submit questions to the State Tax Assessor's Bureau of Taxation.

Another interesting feature of the Maine law, similar to a California provision, is the use of the free registration of vehicles for disabled drivers as a basis for entitlement to the vehicular sales tax exemption accorded to certain veterans.[44] The point is that people with various disabilities are registered under the auspices of one or another state agency in connection with this or that program or status. Cooperation among state bodies can resolve all the eligibility problems that would arise from trying to determine who qualified as disabled for exemptions. A large proportion of disabled persons, if not the vast majority of them, are already known to government, given special education, vocational rehabilitation, state blindness registers, dual-party telephone relay programs, special parking privileges, etc.

Maryland (A): The state of Maryland offers excellent provisions that were previously discussed in Chapter II. A review of the state's refund provisions is in order because this panoply of exemptions may not be well-known in the disabled community, owing in part to the recent enactment of several of them. Several of these exemptions have been in effect for only two years,[45] and Maryland applies a four-year statute of limitation to applications for refunds.[46] Anyone who might wish to pursue this possibility may direct questions to the State Comptroller. A question might also be tendered regarding

the exemption of various accessories for exempt equipment that are not designed specifically for use by disabled persons. There is an exemption for such under the "physical aids" exemption category but there remains some uncertainty regarding the extent to which these provisions apply in the other exemption categories. None of the technology of immediate interest to this review is included under the "physical aids" exemption.

Massachusetts (B,C): By way of prosthetics, this commonwealth and the commonwealth of Kentucky have something in common. Both make use of the individualization model. Massachusetts exempts "artificial devices individually designed, constructed, or altered solely for the use of a particular crippled person so as to become a brace, support . . . or substitute for the bodily structure. . . ."[47] Some administrative clarification of the word "particular" may be helpful, though, in light of a 1981 ruling which held certain seating equipment to be sales tax exempt under the language, "specially designed for use by handicapped children."[48] Adjustable stools, manufactured by the same firm, since "equally usable by anyone," were not. So we may be dealing with a "particular" handicap. Beyond this interpretation, legislative measures will be required. Their enactment in the face of Massachusetts' acute fiscal problems may be difficult to secure.

Michigan (B,C): An interpretation of the "reasonably normal life" language in the Michigan statute must be obtained. The statute provides for the exemption of "a hearing aid, contact lenses if prescribed for a specific disease which precludes the use of eyeglasses, or any other apparatus, device, or equipment used to replace or substitute for a part of the human body or used to assist the disabled person in leading a reasonably normal life," provided that it is purchased on prescription or other order of a licensed health care professional.[49] Since this provision, if interpreted literally, could encompass an enormous array of devices, a position paper or other appropriate guidance should be sought from the Revenue Division of the State Department of the Treasury.

Minnesota (C): Without much elaboration, this state exempts "therapeutic and prosthetic devices." The regulations state that to qualify for exempt status a device must "not only be useful in the preservation of health, it must also serve to cure or heal. Exempt therapeutic devices are attached or applied to the body. . . Prosthetic devices are those which replace injured, diseased, or missing parts of the human body. . . ."[50] This suggests the need for legislation. In this connection, Minnesota has been among the leaders in state efforts to develop a comprehensive and coordinated approach to disability policy. Appropriate tax relief would make sense within that framework, and could perhaps be incorporated into larger programs which have strong support.

Minnesota is interesting for another reason. Among states authorizing motor vehicle exemptions for disabled drivers (Chapter III, Section C), this is one of the few where the exemption is claimed by refund request after the tax has been collected and paid at the time of the vehicle's purchase.[51]

Mississippi (C): No exemptions here provide ground for great optimism. One strategy, however, that might be pursued derives from an interesting feature of the law. Sales taxes are generally considered to be regressive taxes, in that they fall upon everyone at the same rate. This, of course, distinguishes them from income taxes,

which are progressive, with rate of tax dependent on income. A number of states have attempted to introduce, if not progressiveness then at least preferences into their laws. They have done this by dividing businesses or commodities into different classifications and applying the sales tax to each classification at a different rate. In Mississippi the variance in rate is probably greater than in any other state. Short of exemption for assistive technology, it might be possible to get it reclassified or otherwise shifted to a lower rate.

Missouri (B,C): This state takes an interesting approach to the definition of exempt prosthetic or orthopedic devices, defining them as whatever devices the federal Medicare program defined as such on Jan. 1, 1980.[52] Although the state has had ample opportunity to at least update this reference over the intervening years, no indication of its doing so has come to light. Still, to the extent that the federal definition, as drawn primarily from Title XVIII of the Social Security Act[53] may have evolved in the intervening years, one might hope that a common sense approach to incorporating such additional items would be adopted. Hearing aids are also exempted under this rubric. Concerning the definition of prosthetic devices, the Department of Revenue adopted the usual body part replacement language, but it supplemented it in an interesting way. It extended the definition to include a device such as one which, "replaces all or part of the function of a permanently inoperative or malfunctioning internal body organ," provided sold on prescription. Among examples of exempt prosthetics it listed "prosthetic lenses which replace the lens of an eye," but not "regular eyeglasses and contact lenses," and "electronic speech aids, if patient has had laryngectomy or if his larynx is permanently inoperative."[54]

These provisions present a number of interesting possibilities for administrative interpretation, including the following: Would expansion in the Medicare reimbursement equipment list be reflected in this state? Can assistive listening devices worn on the body be added to the definition of hearing aids? Can "internal body part" be taken to refer to sensory organs? With respect to the last of these, the answer is probably no. As recently as three months ago, a tax appeals tribunal held that oxygen therapy equipment did not qualify as an exempt prosthetic device, because it did not replace an organ of the body and did not act as a conduit for the lung sacs.[55] This suggests a very literal reading. It is therefore to be expected that electronic speech aids for people whose larynxes are physically intact would likewise not be well received. Legislation is required in this state, with the statutory terminology useful in providing a basis for its formulation.

Montana: n.a.

Nebraska (B,C): This is one of those states which includes hearing aids under exempt prosthetic devices, so a revenue ruling should be sought from the Sales Tax Division of the Department of Revenue as to inclusion of electronic listening systems.

For those interested in innovative funding arrangements, Nebraska's sales tax law may offer an interesting model. As Chapter I indicated, sales to the federal government, and in most places (including Nebraska) sales to the state, are exempt. This has not generally been interpreted to cover sales to individuals who receive reimbursement from public funds. It has been held to apply to direct governmental purchases, made on official purchase orders, paid with government warrants or checks. In some cases,

however, states have been willing to make allowances. The importance of this provision is the probability that as new modalities for technology financing are elaborated at the state level, various combinations of state and private funds will be involved. At the same time, such new models will in all likelihood seek to put the responsibility for equipment choice and for purchase in the user's hand, consistent with the values of consumer participation. In Nebraska the issue of cost sharing arises in respect to automobiles.

In exempting sales of automobiles to disabled persons, the law provides that the exemption shall apply only if "the maximum amount allowed by law" is contributed by the Veterans Administration or by the Department of Social Services.[56] If this requirement is met, presumably proving need, the entire cost of the vehicle is exempt, even if the maximum public contribution represented only a small portion of the vehicle's overall cost. Absent the requirement of "the maximum" and absent the limitation to only two public funding sources, this principle may be useful in a number of situations, and should be considered by those drafting state equipment loan fund legislation.

Nevada (C): Although dialysis equipment and prescribed ophthalmic aids are exempt here, the state's approach to other exemptions is limited. Legislation will be required under one of a number of possible approaches.

New Hampshire: n.a.

New Jersey (B,C): Some of the usual questions arise. Hearing aids are exempted, necessitating inquiry as to the scope of their definition. "Artificial devices" include those that replace the function of a permanently inoperative or malfunctioning body function, leading to the question of whether sensory aids can be included.[57] The Division of Taxation in the State Department of the Treasury should be contacted with respect to the exact procedure for clarifying the scope of these exemptions.

New Jersey is interesting for something else which has not been encountered elsewhere. There are a number of states whose laws give the implementing agency the authority to determine the extent to which its regulations will be retroactive. There are few examples of an exemption being enacted into law with a refractivity stipulation. Although having nothing to do with technology, there is such a case in New Jersey. A 1988 exemption for contractors on certain building projects was made retroactive to 1984, with the statute of limitations for refund claims concomitantly extended from its normal two years.[58] In states where assistive technology legislation receives strong support, attachment of a retroactivity provision to the reform measures may be feasible and desirable, since most adaptive equipment vendors should be in a position to apprise their customers of the refund entitlement without undue cost or difficulty.

New Mexico (C): Although legislation will be required in this state, there is one interesting provision that may be of particular relevance to disabled technology users in the work force. For employers who hire public assistance recipients, a $600 credit against the gross receipts (that is, the sales) or the use tax is available.[59] If Social Security Disability beneficiaries or SSI recipients fall within the definition of "public assistance recipients," then this tax exemption could dovetail with other work incentives

in the law. In particular, if employers are eligible to receive the $600 exemption on behalf of their low-income disabled employees, the argument for employer provision of necessary work-related technology is significantly strengthened.

New York (A): Chapter II indicated that New York is in the vanguard of states providing a broad range of exemptions for assistive technology devices. As interesting as the content of the exemption provisions are, the methods by which they have been derived are even more pertinent, because in no state have expansive administrative interpretations of statutory language played a greater role than here.

New York exempts "medical equipment" and "prosthetic aids,"[60] but the key provision is its exemption of "artificial devices." At first glance the language seems routine enough: "artificial devices and component parts thereof purchased to correct or alleviate physical incapacity. . . ."[61] Also exempted, on a value-added basis, are "parts, special attachments or special lettering that are added to tangible personal property such as appliances so that a handicapped person can use them. . . ."[62]

Regarding implementation of these now familiar phrases, the New York regulations make clear that replacement of a missing body part or of its function is contemplated.[63] Additionally, the list of examples that are set forth, without ever using the word "sensory," includes a wide range of items that are useful to visually and hearing impaired persons.[64] Owing to the scope of this list, and in light of its designation as illustrative of what is exempt, it seems clear that virtually any electronic item designed specifically for use by sensorially impaired persons is sales tax exempt in this state.

North Carolina (C): This state does exempt hearing aids and orthopedic devices worn on the body,[65] giving rise to the usual question about extension to assistive listening systems. There is, however, no indication that either this or the exemption for prescribed therapeutic, prosthetic, and artificial devices[66] would be broadly construed. It may be useful to contact the Department of Revenue for appropriate rulings, but any real change here will need to be statutory. This possibility is somewhat enhanced by the fact that this state has added a significant number of exemptions to its law in recent years.

North Dakota (C): This state does exempt "artificial devices individually designed, constructed, or altered . . ." so as to become a brace, etc., for a particular disability.[67] The interpretations made on this provision, however, do not indicate inclusion of any electronic, assistive devices.[68] Legislation will be needed.

There are, however, several provisions of interest in this state which should not be omitted from our itinerary. First, sales to Indians on reservations are generally exempt from state taxes.[69] Second, and of potential interest to Canadian citizens, sales to residents of adjacent Canadian provinces are exempt, if those provinces reciprocally exempt North Dakota residents from their sales taxes.[70] Depending upon fluctuations in exchange rates, and pending the elimination of all tariffs under the U.S. Canada Free Trade Agreement, this could have some impact on bottom line costs for residents of Manitoba and Saskatchewan.

Ohio (C): This state includes hearing among the human bodily functions for which exemptions are available for devices designed to ameliorate the impairment.[71] Accordingly, the Department of Taxation should be contacted to determine the scope of such devices. Legislative efforts, however, seem in order.

Oklahoma (C): In this state, exemptions do not exist which would provide a clear basis for the formulation of legislative recommendations. Removal of classes which limit the scope of several existing exemptions probably represents the best approach.

Oregon: n.a.

Pennsylvania (C): Prosthetic or therapeutic devices are the most germane exemption in this state. Those in question, however, are the ones designed for use by a particular individual "to correct or alleviate a physical incapacity. . . ."[72] Hearing aids are also exempt.[73] A remote possibility exists that the classification of various devices such as "therapeutic or prosthetic", and therefore exempt, may hinge upon obtaining a medical prescription. Nevertheless, it appears that legislation will be desirable in this area. With respect to the hearing aids exemption, a ruling may be obtained upon written request to the Department of Revenue at P.O. Box 1874, Harrisburg, PA 17105.

Rhode Island (B,C): Once again, prostheses and orthopedic appliances designed to be worn upon the body, including artificial hearing devices, are sales tax exempt.[74] This state also offers an exemption for sales to a type of nonprofit organization not mentioned in the laws of other states. This is for sales to "interest free loan associations" not operated for profit.[75] If this provision is read together with other provisions of the law establishing exemptions for certain sales made by nonprofit organizations,[76] one wonders whether this state might not represent an especially suitable environment for the establishment of nonprofit assistive technology loan programs. The State Tax Administrator should be consulted for necessary interpretations, but legislation will also be required for a broad range of assistive devices. Possibilities may be heightened by the fact that Rhode Island is among states that have enacted a significant number of exemptions in recent years.

South Carolina (C): This state exempts prescribed prosthetic devices[77] which are defined, pursuant to what purports to be a literal dictionary definition, in terms of artificial devices that replace a missing part of the body.[78] Hearing aids are also exempt not as a prosthetic, but nevertheless subject to the wearable instrument requirement.[79] A revenue ruling or sales tax decision on inclusion of wearable electronic listening systems within the hearing aids exemption should be sought from the State Tax Commission. Legislation will be necessary for other devices.

South Dakota (B,C): Hearing aids and other equipment worn as a correction or substitute for a part of the body are sales tax exempt. Subject to prescription or to being dispensed by a licensed dealer.[80] Exempt medical equipment is defined to include devices "intended to affect the structure or any function of the human body," or "intended to assist in the mobility of persons. . . ."[81] Since these provisions raise some interesting interpretive questions, appropriate inquiry should be made to the Department of Revenue.

Another interesting provision in this state deals with the sales tax refund for low-income aged or disabled persons. While it is likely that most people living in the state would be aware of these provisions, and while it may not be common to find persons with extremely limited incomes buying electronic aids, it should be noted that small refunds are available to single persons with annual incomes not in excess of $7,200, with correspondingly higher levels for multi-person households.[82] Such refunds could make a small difference for persons who buy technology out of their savings. Even under the most favorable view of the administrative process, statutory measures will be needed here.

Tennessee (B,C): Hearing aids are exempt in this state[83] under an unusually generous definition. They are defined as any instrument or device designed for or represented as aiding, improving, or correcting defective human hearing.[84] If this definition, which comes from outside the sales tax law but is incorporate into it by reference, is construed literally, then not only wearable assistive listening systems but potentially TDDs and a host of other devices should qualify for exemptions. On technology for other disabilities, prospects for administrative reform are less promising. The courts, however, in this state have played an interesting role by judicially interpolating heart pacemakers into the definition of prosthetic devices.[85]

Texas (A): Chapter II discussed the extraordinary exemptions forthcoming for sensory aids in Texas.[86] By reviewing the items listed (see Chapter II, Section A) and the underlying legislative intent, it would appear that almost any technical aid falls within these exemptions. Nevertheless, a careful reading of the statute reveals some omissions. For example, it does not appear that stand-alone braille or speech devices which do not connect to computers are explicitly covered. An imposition of a tax, however, would be very surprising under the circumstances.

Another small issue with the vision-related technology has to do with a procedural distinction. Those devices listed under Subsection 11 (namely, braille wrist watches, braille writers, braille paper, and braille electronic equipment that connects to computer equipment) are categorically exempt. In contrast, items listed under Subsection 12 (slate and styluses, print enlargers, magnifiers, canes, talking clocks, large print terminals, talking terminals, and harnesses for guide dogs) appear to be exempted on the basis of the purpose for which the items will be used. The statute specifies that this group of items will be exempt "if purchased for use by the blind to enable them to function more independently." In a real sense, there is no other purpose for which they could be purchased. As a practical matter, this proviso may mean that the purchaser should be prepared to furnish a statement in writing to the retailer indicating, as will by definition be true, the purpose for making the purchase.[87] No registration with the State Comptroller of Public Accounts is required on the part of the purchaser, and exemption numbers do not exist. The exemption certificate is thus a rather informal document. It probably will suffice if it sets forth the items purchased, the date, and their cost, and if it recites that they are being purchased for the prescribed purpose.

There is an important exemption for deaf persons that covers "specialized printing or signaling equipment used by the deaf for the purpose of communicating through the use of a telephone. . . ."[88] All materials used in such equipment, including printing paper and ribbons, are also exempt.[89] These provisions would presumably extend to any telecommunications device that a deaf individual might use. It should not be a

serious concern that the term "deaf" here is used in contradistinction to "hearing impaired." There is, of course, no precise equivalent to "legal blindness" in the deafness realm.

Despite this important exemption covering the communication needs of deaf persons, there is still a gap in exemptions for sensory aids. Although hearing aids are also exempt,[90] the requirement that they be "worn"[91] once again raises questions concerning the status of various assistive listening systems. A decision from the Comptroller of Public Accounts may be useful in clarifying this gap in the exemption. In view of the state's overall policy toward technology for sensory impairments, there is reason to be hopeful that a favorable ruling would be forthcoming.

Utah (C): Relevant exemptions are minimal in this state. Legislation will be required.

Vermont (C): This state exempts from sales tax categories variously described as "artificial components of the human body," prosthetic, medicinal, and corrective appliances, corrective optical devices, and hearing aids.[92] The implementing regulations clearly state that reduction in the severity of ailments, injuries, or disabilities is contemplated. There is, however, nothing in the language to suggest other than a strict medical model.

One interesting point of this state's law is a provision for partial exemption for mobile homes, wherein only a 40% of their sales price is taxed.[93] This is a version of the value-added concept. It differs from that which might be used with technology to be used by disabled persons insofar as the proportion of the total cost to be taxed is predetermined. In theory, a value-added approach to assistive technology would tax that portion of the overall cost of the item without adaptive modifications designed for use by non-disabled persons.

Based on recent history, where Vermont has taken a new approach to structuring its law, and where a significant number of legislative exemptions have been added to the law in recent years, one may be hopeful that legislative initiatives on behalf of assistive device sales tax exemption could meet with some success.

Virginia (B): In addition to determining the definition of hearing aids,[94] this state offers the potentially important exemption for communications devices discussed in Chapter II, Section D. This provides that "special typewriters and computers and related parts and supplies specifically designed for those products used by handicapped persons" are exempt, when prescribed by a physician.[95] The implementing regulations do not appear to further define this exemption; but by providing examples of "durable medical equipment," the regulations include "writing and speech aids for the impaired."[96] The meaning of these provisions would appear to be fairly self-evident, and to apply across the spectrum of disabilities. The Department of Taxation may be contacted for a ruling on the inclusion within the exemption of one or another specific device.

Should additional legislation be found necessary, it is notable that Virginia is undertaking a long-term study of its tax laws. This study is dividing all sales and use taxes into five categories and is recommending review, on an annual basis, the criteria used for establishing exemptions for each such grouping.[97] It should be noted that the health and medical exemptions will be included in, if not wholly comprising, one

group. This annual review may represent a splendid opportunity to make the case for systematic exemption for assistive technology to the Joint Subcommittee established by the General Assembly to study this matter, or to the commissioner of the Department of Taxation. To be sure, an undertaking of this magnitude is likely to have, as one of its objectives, the elimination of exemptions with a minimum of political dislocation.

Washington (C): This state exempts prescribed prosthetic and orthotic devices.[98] Prosthetics are defined in terms of physically replacing a missing part of the human body.[99] Under these circumstances, legislation will be needed to exempt assistive devices.

West Virginia (C): This statute exempts prescribed medical appliances.[100] Legislation will be needed to achieve pertinent exemptions.

Wisconsin (C): Since hearing aids are here defined as worn on the body, the possibility for seeking an interpretation from the Department of Revenue regarding the inclusion of wearable assistive listening devices does exist. For other assistive technology, legislation is indicated because exemptions are limited to artificial devices for particular individuals that are worn on the body and that become a brace, support, or substitute.[101] Questions about hearing aids may be directed to the Department of Revenue.

Wyoming (C): Prosthetic devices are exempt,[102] but this exemption bodes no real possibilities for other assistive technology. In considering any legislative initiative, it may be useful to note that the Department of Revenue and Taxation, which, of course, administers the tax, has been reorganized this year.[103] Thus, some sort of comprehensive review of the law and its administration might be forthcoming in the near future.

CHAPTER V

RECOMMENDATIONS

A. Legislation

Several legislative strategies exist. They can be pursued simultaneously. First among these, insofar as its impact would be nationwide, would be to pursue federal legislation along the lines of that described in Chapter III, Section A. Second, legislation can be pursued at the state level.

Any effort to legislate appropriate exemptions on a state by state basis will necessarily be arduous. Its relative success will depend upon the prioritizing of states on the basis of relative likelihood of success, and on the basis of market potential within the state. To the limited extent possible, Chapter IV has tried to suggest grounds for optimism or pessimism in connection with a number of states. Even in a relatively favorable local climate, prospects will additionally depend upon the ability of the field to build effective working coalitions around the drive for exemption. Such constituencies will be effective in energizing the legislative process to the degree that they include consumers, vendors, manufacturers, advocacy groups, and appropriate organizations from the nonprofit sector. Support from state blindness agencies, generic rehabilitation agencies, disabled services offices, and other involved entities within the executive branch of state governments will also be key. Also essential will be the ability of the coalition to draft legislative proposals, such as the excellent legislation introduced in California this year (refer to note 24). This draft legislation is responsive to local conditions and concerns, and is drafted in ways that are consistent with the structure of the state's law.

In the end, it must be recognized that sales tax is only a small part of the problem when considering overall tax policies toward people with disabilities. Major opportunities already exist within state tax law that are incorporated into the federal income tax code. These could be used to maximize and to leverage the value of existing tax subsidies for assistive technology. Coalitions of the kind needed here can be a springboard for addressing the panoply of state tax issues comprehensively. Whether one is legislating in connection with a single tax or attempting to rationalize tax policy more broadly, a number of difficulties must be foreseen and overcome. The principal objections and concerns of legislators and state revenue officials to technology exemption must be identified.

These concerns can be grouped into three major categories: revenue loss and cost of administration to the state, definitional issues surrounding what technology is to be covered, and fraud in the determination of who is disabled so as to be entitled to the exemption. It would be premature to attempt to respond to these concerns here. Suffice it to say, satisfactory and persuasive responses do exist to allay each of these fears. They are responses which do not further complicate either the businesses of vendors or the lives of consumers, both of which are key concerns if tax reform is to be achieved without taking a toll in hidden or long-term costs.

Means to expedite the process of state legislative reform may also exist. There are two multistate tax organizations which should be approached with a view to ascertaining their willingness and ability to participate in an outreach effort concerning assistive technology to their state government members. The more significant of these is the Federation of Tax Administrators (444 North Capitol Street, N.W., Washington, DC 20001; (202) 624-5890). This is an association of all state tax agencies. The legislative process could be greatly facilitated if it could be moved into a position to recommend model legislation to its members, or even to educate its members on the issues.

The Multi-State Tax Commission (444 North Capitol Street, N.W., Washington, DC 20001; (202) 624-8699) is also worthy of approach in this regard. It is understood that 19 states are members of the MSTC.

B. Administration

The most widely applicable administrative ruling that must be sought deals with the status of assistive listening devices. Appropriate letters of inquiry and requests for rulings should be written. Other inquiries are of a more individualized nature and should be undertaken in the order that their perceived importance warrants. Agency addresses for Category (B) states are set forth in Table 9. All inquiries can be undertaken while efforts for legislative reform are being geared up, but in some cases the content of legislative proposals will depend in part on what the administrators say. Because administrative interpretations pointing out anomalies in the law often draw attention to the issues involved, even adverse determinations from state sales tax agencies can actually contribute to subsequent legislative success.

Notes

1. Alaska, Delaware, Montana, New Hampshire, and Oregon. Alaska allows local sales taxes, ALASKA STAT. § 29.45.650 (Michie 1962 and supp. 1989).

2. LA. REV. STAT. ANN. § 47:305(D)(4) (1951 and supp. 1989).

3. Based on average rates paid in all states adjusted for population.

4. For example, Connecticut has repealed its exemption for meals costing under $2, and Louisiana has cancelled its $10 per year "poor person" refund.

5.110 W.Va. Code Of State Regulations 15, § 9.2.

6. For example, Arizona exempts all sales of new farm machinery, and North Dakota exempts certain agricultural chemicals.

7. Kentucky Revenue Cabinet, Revenue Policy 51P320 (6/1/83).

8. California State Board of Equalization, Sales Tax Counsel Ruling 360.0110 (2/25/88); Massachusetts Department of Revenue, Technical Information Release 85-7 (9/13/85).

9. Rules of the Pennsylvania Department of Revenue, § 52.1(d) (3/1/84).

10. FLA. ADMIN. CODE ANN. r. 12A-1.021(1)(b) (1989); MD. TAX-GEN. CODE ANN. § 11-211(b)(9) (1988); Regulations of the Pennsylvania Department of Revenue, § 52.1(d) (1987); 1985 Wis. Laws 29.

11. FLA. ADMIN. CODE ANN. r. 12A-1.021(1)(a); KAN. STAT. ANN. § 79-3606(s) (1984); MICH. COMP. LAWS §205.54a(k) (1986).

12. MD. TAX-GEN. CODE ANN. § 11-211(b)(9).

13. See notes 95 and 96.

14. 7 U.S.C. § 2013 (1988).

15. 29 U.S.C. § 2201 (1983 and supp. 1989).

16. IND. ADMIN CODE tit. 45, r. 2.2-5-58 (1988); 1987 N.D. Laws 709; VT. STAT. ANN. tit. 32, § 9743 (1981).

17. VT. STAT. ANN. tit. 32, § 9743 (1981); Vermont Department of Taxes, Regulation 233-2 (1971).

18. MD. TAX-GEN. CODE. ANN. § 11-204.

19. Alabama, Arizona, Arkansas, Idaho, Indiana, Louisiana, Maine, Massachusetts, Michigan, Mississippi, Nevada, New Mexico, South Carolina, South Dakota, and Washington.

20. S.J. Res. 20, 1987 Nevada Laws; H.R. Con. Res. 3083, 1987 North Dakota Laws; S.J. Res. 122, 1989 Virginia Laws.

21. ALA. CODE § 40-23-5 (1988).

22. ARIZ. REV. STAT. ANN. § 23-501 (1980 and Supp. 1988).

23. ARIZ. REV. STAT. ANN. § 36-1901(2); Arizona Department of Revenue, Sales and Use Tax Regulations, r. 15-5-1819 (1981).

24. S. 470, 1989 California Laws (introduced 2/13/89). We are indebted to Paul Lewis for information on this bill.

25. COLO. REV. STAT. § 39-26-114(1) (1982).

26. CONN. GEN. STAT. § 12-412(38) (1989).

27. CONN. GEN. STAT. § 12-425(2).

28. FLA. ADMIN. CODE. ANN. r.r. 12A-1.020 to .022.

29. Georgia Department of Revenue, Regulation 560-12-1.18 (1980).

30. HAW. REV. STAT. § 237-23(a)(11) (1985).

31. HAW. REV. STAT. §§ 237-17 and 237-24(13).

32. 1986 Haw. Sess. Laws 386.

33. S. Con. Res. 144, 1988 Idaho Laws.

34. IDAHO CODE § 63-3622 O (1989).

35. 1988 Ill. Laws 85-1135.

36. IND. ADMIN. CODE tit. 45, r. 2.2-5-59.

37. IOWA ADMIN. CODE, r. 701-20.9(3)(e)(1987).

38. Iowa Department of Revenue and Finance, "Business and Tax News" (3/87).

39. IOWA ADMIN. CODE, r. 701-17.19 (2)(c).

40. KAN. STAT. ANN. § 79-3606(s).

41. KY. REV. STAT. ANN. § 139.472(2) (Michie/Bobbs-Merril 1982).

42. LA. ADMIN. CODE tit. 61, § 44.01(D) (1978).

43. ME. REV. STAT. ANN. tit. 36, § 1760(33) (1988).

44. ME. REV. STAT. ANN. tit. 29, § 251.

45. E.g., 1988 Md. Laws 339 (motor vehicle access) and 1987 Md. Laws 32 (telecommunications equipment).

46. MD. TAX-GEN. CODE ANN. §§ 13-901 and 13-1104(g).

47. MASS. GEN. LAWS ANN. ch. 64H, § 6(l) (West 1988).

48. Massachusetts Department of Revenue, Letter Ruling 81-69 (8/4/81).

49. MICH. COMP. LAWS § 205.54a(k) (1986), as implemented by Michigan Department of Treasury, Regulation 205.139, rule 89 (1979).

50. Minnesota Department of Revenue, rule 8130.4800(3) (1984); MINN. STAT. ANN. § 297A.25(3) (West 1972 and supp. 1988).

51. Form ST-11dv. This form can be obtained from the Minnesota Department of Revenue, Sales and Use Tax Division, PO Box 64452, St. Paul, MN 55164.

52. MO. ANN. STAT. § 144.030(18) (Vernon 1986 and supp. 1990).

53. Section 1862(a)(12) Social Security Act (1982 and supp. 1989).

54. Missouri Department of Revenue, Tax Information Bulletin (4/1/79).

55. Missouri Administrative Hearings Commission, Docket RS-87 0770 (5/16/89).

56. NEB. REV. STAT. § 77-2704(m) (1986).

57.New Jersey Department of Treasury, Division of Taxation, "State Sales Tax News" (3/4/80).

58. 1988 N.J. Laws 83.

59. N.M. STAT ANN. § 7-1A-1 (1978 and supp. 1988); 1988 N.M. Laws 126.

60. N.Y. TAX LAW § 1115(a)(3) (McKinney 1987); N.Y. COMP. CODES R. & REGS. tit. 20, § 528.4(a)(1988).

61. N.Y. TAX LAW § 1115 (a)(4).

62. N.Y. COMP. CODES R. & REGS. tit. 20, § 528.5(b)(2).

63. N.Y. COMP. CODES R. & REGS. tit. 20, § 528.5(b).

64. New York State Department of Taxation and Finance, Publication No. 822 (10/83).

65. N.C. GEN. STAT. §105-164.13(12) (1987).

66. 1984 N.C. Sess. Laws 1071.

67. N.D. CENT. CODE § 57-39.2-04(26) (1983 and Supp. 1989).

68. North Dakota Commissioner of Revenue, Sales Tax Guidelines (1/88).

69. N.D. ADMIN. CODE § 81-04.1-03-01.

70. N.D. CENT. CODE § 57-39.2-04(12).

71. OHIO REV. CODE ANN. § 5739.02(b)(19) (Anderson 1986).

72. Pennsylvania Department of Revenue, Regulation 52.1(b)(4).

73. Pennsylvania Department of Revenue, Regulation 52.1(d)(1).

74. Rhode Island Division of Taxation, Sales and Use Tax Regulations, Regulation SU 87-30(a) (1987).

75. R.I. GEN. LAWS § 44-18-30(E) (1988).

76. R.I. GEN. LAWS § 44-18-30(S).

77. S.C. CODE ANN. § 12-35-550(31)(Law. Co-op. 1976 and Supp. 1988).

78. South Carolina Tax Commission, Manual of Rules and Regulations, Regulation 117-174.257 (1981).

79. S.C. CODE ANN. § 12-35-550(43).

80. S.D. CODIFIED LAWS ANN. § 10-45-14.1 (1989); South Dakota Department of Revenue, Directive ST-123 (6/84).

81. S.D. ADMIN. R. 64:06:03:50 (1988).

82. S.D. CODIFIED LAWS ANN. § 10-45A-5.

83. TENN. CODE ANN. § 67-6-329(16) (1983).

84. TENN. CODE ANN. § 63-15-101(4).

85. TENN. CODE ANN. § 67-6-314(5).

86. TEX. TAX CODE ANN. §§ 151.313(7) to (9) (Vernon 1982 and supp. 1989); TEX. ADMIN. CODE tit. 34, § 3.284 (1985).

87. TEX. ADMIN. CODE tit. 34, § 3.284(c)(5).

88. TEX. TAX CODE ANN. § 151.313(7).

89. TEX. ADMIN. CODE tit. 34, § 3.284(c)(4).

90. TEX. TAX CODE ANN. § 151.313(4).

91. TEX. ADMIN. CODE tit. 34, § 3.284(a)(5).

92. VT. STAT. ANN. tit. 32, § 9741(2).

93. VT. STAT. ANN. tit. 32, § 9741(32).

94. VA. CODE ANN. § 58.1-608(7)(i) (supp. 1989).

95. VA. CODE ANN. § 58.1-608(7)(i).

96. Virginia Register, Regulation No. 630-10-65(d)(6) (1/85).

97. S.J. Res. 70, 1988 Virginia Laws.

98. WASH. REV. CODE ANN. § 82.08.0283 (1981).

99. WASH. ADMIN. CODE § 458-20-18801 (1983).

100. W.VA. CODE § 11-15-9(n) (1987).

101. WIS. STAT. ANN. § 77.54(22) (West 1989).

102. WYO. STAT. § 39-6-405(a)(xvi) (1977).

103. 1989 Wyo. Sess. Laws 266.

Table 1

State Sales Tax Law Citations

AL: Alabama Code, title 40, articles 1 and 2

AK: n.a.

AZ: Arizona Revised Statutes, title 42, chapter 8

AR: Arkansas Code Annotated, title 26, chapter 52

CA: California Revenue and Taxation Code, part 1, division 2

CO: Colorado Revised Statutes, title 39, chapter 26

CT: Connecticut General Statutes, chapter 219

DE: n.a.

FL: Florida Statutes, chapter 212

GA: Georgia Code, title 48, chapter 8

HI: Hawaii Revised Statutes, chapter 237

IL: The Retail Occupation Tax Act and The Service Occupations Tax Act of Illinois

IN: Indiana Code, title 6, article 2.5

IA: Code of Iowa, chapter 422

KS: Kansas Statutes Annotated, chapter 79, article 36

KY: Kentucky Revised Statutes, chapter 139

LA: Louisiana Revised Statutes, title 47, chapter 2, subchapter II

ME: Maine Revised Statutes Annotated, title 36, part 3

MD: Maryland Code Annotated, General Tax article, title 11

MA: Massachusetts General Laws, chapter 64H

MI: Michigan Compiled Laws, chapter 205

MN: Minnesota Statutes, chapter 297A

MS: Mississippi Code, title 27, chapter 65

MO: Revised Statutes of Missouri, chapter 144

MT: n.a.

NE: Revised Statutes of Nebraska, article 27, chapter 77

NV: Nevada Revised Statutes, chapter 372

NH: n.a.

NJ: New Jersey Statutes Annotated, title 54, chapter 32B

NM: New Mexico Statutes Annotated, chapter 7, article 9

NY: New York Tax Law, article 28

NC: North Carolina General Statutes,chapter 105, article 5

ND: North Dakota Century Code, chapter 57-39.2

OH: Ohio Revised Code, chapter 5739

OK: Oklahoma Statutes, title 68, article 13

OR: n.a.

PA: Pennsylvania Statutes Annotated, title 72, chapter 5, article 2

RI: Rhode Island General Laws, title 44, chapters 18 and 19

SC: Code of Laws of South Carolina, title 12, chapter 35

SD: South Dakota Codified Laws, chapter 10-45

TN: Tennessee Code Annotated, title 67, chapter 6

TX: Texas Tax Code, article 151

UT: Utah Code Annotated, title 59, chapter 12

VT: Vermont Statutes Annotated, title 32, chapter 233

VA: Virginia Code, title 58.1, chapter 6

WA: Revised Code of Washington, chapter 82.08

WV: West Virginia Code, chapter 11, article 15

WI: Wisconsin Statutes, chapter 77

WY: Wyoming Statutes, title 39, article 6

Table 2

Sales Tax Administration Agencies

Alabama Department of Revenue

Alaska, n.a.

Arizona Department of Revenue

Arkansas Department of Finance and Administration

California State Board of Equalization

Colorado Department of Revenue

Connecticut Department of Revenue Services

Delaware, n.a.

Florida Department of Revenue

Georgia Department of Revenue

Idaho Tax Commission

Illinois Department of Revenue

Indiana Department of Revenue

Iowa Department of Revenue and Finance

Kansas Department of Revenue

Kentucky Department of Revenue, Revenue Cabinet

Louisiana Department of Revenue and Taxation

Maine State Tax Assessor

Maryland State Comptroller

Massachusetts Department of Revenue

Michigan Department of Treasury, Sales Tax Division

Minnesota Department of Revenue

Mississippi Tax Commission

New Hampshire, n.a.

New Jersey Department of Treasury, Division of Taxation

New Mexico Taxation and Revenue Department

New York Department of Taxation and Finance

North Carolina Department of Revenue

North Dakota Department of Taxation

Ohio Department of Taxation

Oklahoma Tax Commission

Oregon, n.a.

Pennsylvania Department of Revenue

Rhode Island Division on Taxation

South Carolina Tax Commission

South Dakota Department of Revenue

Tennessee Department of Revenue

Texas Comptroller of Public Accounts

Utah Tax Commission

Vermont Department of Taxes

Virginia Department of Taxation

Washington Department of Revenue

West Virginia Department of Tax and Revenue

Wisconsin Department of Revenue

Wyoming Department of Revenue and Taxation

Table 3

Recently Enacted Exemptions Illustrating Local Economic or Social Concerns

Alabama: The Eye Foundation

Arizona: Repeal of solar energy equipment exemption

Arkansas: Nonprofit organizations providing temporary housing to families of hospital or sanitarium patients

California: School yearbooks and catalogs produced by county offices of education; film transfers in motion picture industry

Connecticut: Disposable diapers

Florida: Chartering a fishing boat with crew

Georgia: Videotapes to be exhibited for a fee

Hawaii: Alcohol fuels in addition to gasohol

Idaho: Yard sales

Louisiana: Materials used in harvesting catfish

Maine: Fuels used in burning blueberry fields

Maryland: PTA's exemption on purchases on same basis as schools

Massachusetts: Items used in commercial fishing

Minnesota: Three over-the-counter analgesics; bullet proof vests for peace officers

New Jersey: Marine terminal cargo handling machinery; tickets to kickboxing and other combative sports, in addition to boxing

North Carolina: Increase of funeral expense exemption from $150 to $1,500

Rhode Island: Coins with numismatic or investment value

South Dakota: Sales proceeds used for restoration of governor's mansion

Vermont: Sales of ferry boats for commercial transportation

Washington: Vans for ride sharing by seven or more people; meals furnished to homeless persons

Table 4

Citations for Sensory Aids for Vision Loss

Connecticut General Statutes, Section 12-412(38).

Florida Administrative Code, Rule 12A-1.021(2).

Maryland Code Annotated, General Tax Article, Section 11-211(b)(2) and (4)

New York Tax Law, Section 1115 (a)(4); Department of Taxation and Finance, Publication No. 822; 20 New York Compilation of Codes, Rules and Regulations, Section 528.5(b).

Texas Tax Code Annotated, Section 151.313(11) and (12); 34 Texas Administrative Code, Rule 3.284(c)(5).

Table 5

Citations for Sensory Aids for Hearing Loss

Connecticut General Statutes, Section 12-412(38).

Florida Administrative Code, Rule 12A-1.021(2)(b).

Maryland Code Annotated, General Tax Article, Section 11-211(b)(3) and (4).

New York Tax Law, Section 1115(a)(3) and (4); Department of Taxation and Finance, Publication 822; 20 New York Compilation of Codes, Rules, and Regulations, Section 528.5(b).

Texas Tax Code Annotated, Section 151.313(10); 34 Texas Administrative Code, Rule 3.284(c)(4).

Table 6

Summary of Vehicle Exemptions

Arkansas Code Annotated, Sections 26-52-401(6) and 26-52-415
Exemption for sale of motor vehicle and adaptive equipment to disabled persons purchasing with financial assistance from the Veteran's Administration; and exemption for one new automobile, not truck or trailer, once every two or more years to service-connective blind veteran, upon presentation of V.A. letter at time of application for license.

California Revenue and Taxation Code, Section 6369.4
Exemption for items used to modify vehicle for physically disabled person and portion of vehicle cost attributable to modification, when sold to person issued a distinguishing license under state vehicle code.

Florida Administrative Code, Rule 12A-1.021(1)(b)
Items installed on motor vehicles to make them adaptable for disabled persons such as special controls for paralytics and amputees, when prescribed.

Georgia Code Annotated, Section 48-8-3(30)
Sale of a vehicle to a service connected disabled veteran when veteran receives a V.A. grant to purchase and specially adapt the vehicle.

Maine Revised Statutes Annotated, Title 36, Section 1760(22)
Sales of vehicles to amputee veterans who are granted free registration by the Secretary of State.

Maryland Code Annotated, General Tax Article, Section 11-21(b)(12)
Property for installation in a motor vehicle that provides access to or permits operation of a vehicle.

Massachusetts General Laws Annotated, Chapter 64H, Section 6(u)
Sale of a motor vehicle to and for the personal and noncommercial use of a person who has lost or permanently lost the use of both legs, both arms, or one leg and one arm.

Minnesota Statutes Annotated, Section 297A.25(18)
Sale of automobile or other conveyance if purchase assisted by grant from V.A.

Revised Statutes of Nebraska, Section 77-2704(m)
Entire price of a motor vehicle if maximum amount allowed by law is contributed to Veterans Administration or Department of Social Services for a disabled person, with exemption based on amount contributed if less than maximum.

New York Compilation of Codes, Rules, and Regulations, Title 20, Section 528.5(b)(1)
Items installed on motor vehicles to make them adaptable for disabled persons, including special controls and lifts for entry.

North Dakota Century Code, Section 57-39.2-04(26)

Equipment, including manual control units, van lifts, van door opening units, and raised roofs, for attachment to or modifying a motor vehicle for use by a permanently physically disabled person, and for motorized implements of husbandry.

Pennsylvania Department of Revenue, Rule 52.1(d)

Automobile accessories when noted by the Department of Transportation upon the motor vehicle operator's license of purchaser that such accessories are necessary, when charges for adaptive equipment separately stated on sales invoice.

Rhode Island General Laws, Section 44-18-30(T) and (NN)

Sale of motor vehicle to any person suffering from paraplegia, upon furnishing affidavit by duly licensed physician to tax administrator, and provided vehicle specially equipped for use by paraplegic. Also sale of a motor vehicle and adaptive equipment to and for the use of a service connected amputation, or to any double amputee veteran whether or not service connected, purchased by and specially equipped for use by an amputee veteran.

Texas Tax Code Annotated, Section 151.313(4)

Hand controls installed on automobiles to correct a human defect.

Virginia Code Annotated, Section 58.1-608(7)

Special equipment installed on a motor vehicle purchased by a handicapped person to operate vehicle.

Table 7

Custom Software Exemption Citations

AL: Alabama Department of Revenue, Regulation 810-6-1.37(2)

AZ: Arizona Department of Revenue, Tax Ruling No. 1-17-83 (3/23/83)

CO: Colorado Department of Revenue, Regulation 26-102.8

ID: Idaho Tax Commission, Regulation 12.2(c)

IL: 86 Illinois Administrative Code, Section 130.1935

IN: Indiana Code Annotated, Section 6-2.5-2-1

KY: Kentucky Revenue Cabinet, Revenue Policies 51P170-172

MD: Maryland Code Annotated, General Tax Article, Section 11-219(b)

MA: 830 Code of Massachusetts Regulations, Section 64H.1.3(6)

MI: Michigan Compiled Laws, Section 205.51(f)

MN: Minnesota Statutes Annotated, Section 297A.01(17)

MO: 12 Missouri Code of State Regulations, Section 10-3.588 (6) and (7)

NV: Nevada Administrative Code, Section 372.855-885

NC: North Carolina General Statutes, Section 105-164.13(20)

ND: North Dakota Administrative Code, Rule 81-04.1-03-11

PA: Pennsylvania Department of Revenue, Rule 31.32(c)

RI: Rhode Island General Laws, Section 44-18-30(SS); Division of Taxation, Regulation SU 87-25(5)

WA: Washington Administrative Code 458-20, Rule 155

WI: Wisconsin State Rules, Rule (Tax) 11.71

WY: Wyoming Statutes, Section 39-6-404(a)(13)

Table 8

States by Primary Exemption Status

Note: In the following table, state name is followed by letter designations.

(A) represents the existence of relevant exemptions under current law.

(B) signifies a need to seek rulings from state tax officials in order to fully determine the extent of existing exemptions.

(C) indicates that state legislation should be sought.

Multiple letter designations indicate that a state can be placed in more than one of these categories.

AL	(C)
AK	n.a.
AZ	(B)
AR	(C)
CA	(C)
CO	(C)
CT	(A,B,C)
DE	n.a.
FL	(B,C)
GA	(C)
HI	(C)
ID	(C)
IL	(B,C)
IN	(B,C)
IA	(C)
KS	(B,C)
KY	(B,C)
LA	(C)
ME	(B,C)
MD	(A)
MA	(C)
MI	(B,C)

MN	(C)
MS	(C)
MO	(B,C)
MT	n.a.
NE	(B,C)
NV	(C)
NH	n.a.
NJ	(B,C)
NM	(C)
NY	(A)
NC	(C)
ND	(C)
OH	(C)
OK	(C)
OR	n.a.
PA	(C)
RI	(B,C)
SC	(C)
SD	(B,C)
TN	(B,C)
TX	(A)
UT	(C)
VT	(C)
VA	(B)
WA	(C)
WV	(C)
WI	(C)
WY	(C)

Table 9

Administrative Agency Addresses for Category "B" States

Arizona Department of Revenue
Sales Tax Division
1600 W. Monroe
Phoenix, AZ 85007
(602) 542-4565

Connecticut Department of Revenue Services
92 Farmington Avenue
Hartford, CT 06105
Attn: Legal Division
(203) 566-8520

Florida Department of Revenue
Bureau of Tax Information and Assistance
Taxpayer Assistance Section
P.O. Box 5139
Tallahassee, FL 32314-5139
(904) 488-6387

Illinois Department of Revenue
Legal Services Bureau
101 W. Jefferson Street
Springfield, IL 62704-0001
(217) 782-3336

Indiana Department of Revenue
Legal Section
State Office Building, Room 202
Indianapolis, IN 46204
(317) 232-2440

Kansas Department of Revenue
Business Tax Bureau
Docking State Office Building, 3rd floor
Topekà, KS 66625-0001
(913) 296-2461

Kentucky Department of Revenue
Tax Policy Section
P.O. Box 423
Frankfort, KY 40602
(502) 564-4580

Maine State Tax Assessor
Bureau of Taxation
Sales Tax Division
Station 24
Augusta, ME 04333
Attn: Donald Blagden
(207) 289-2076

Maryland State Comptroller
Retail Sales Tax Division
301 W. Preston Street
Baltimore, MD 21201
(301) 255-1705

Michigan Department of Treasury
Sales Tax Division
Technical Support
Treasury Building
Lansing, MI 48922
(517) 373-3190

Missouri Department of Revenue
Business Tax Bureau
P.O. Box 840
Jefferson City, MO 65105
(314) 751-2836

John Boehm, Commissioner
Nebraska Department of Revenue
P.O. Box 94818
Lincoln, NE 68509-4818
(402) 471-5729

New Jersey Department of Treasury
Division of Taxation
50 Barrack Street, CN-269
Trenton, NJ 08446-0269
(800) 323-4400

Tax Administrator
Rhode Island Division of Taxation
289 Promenade Street
Providence, RI 02908
(401) 277-2950

Tennessee Department of Revenue
Sales Tax Administration
Andrew Jackson State Office Building
500 Deaderick Street
Nashville, TN 37242
(615) 741-3581

Texas Comptroller of Public Accounts
Correspondence Section
Capitol Station
Austin, TX 78774
(512) 463-4600

Commissioner
Virginia Department of Taxation
P.O. Box 6L
Richmond, VA 23282
(804) 367-8000